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Letter dated 27 December 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from India, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you would arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

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Annex

[Original: English]

Letter dated 24 December 2001 from the Chargé d'affaires a.i. of the Permanent Mission of India to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I forward herewith India's report in response to Security Council resolution 1373 (2001) (see enclosure).

The report is in four parts. Of these, the first three, which are attached, are meant for general distribution, and may be circulated as documents of the Security Council.

The fourth section, which I am sending to you separately, is a confidential document, meant only for the information and use of the Counter-Terrorism Committee, and is not for wider distribution.

(*Signed*) Satyabrata **Pal**

Enclosure

Report by India to the Counter-Terrorism Committee pursuant to resolution 1373 (2001)

India's report concerning the implementation is organised under the following Sections:

Section I Measures Against Terrorism: This Section addresses issues in Operative Para 2 of the Resolution which relates to aspects such as criminalisation of Terrorist Act, recruitment, training, supply of weapons and punitive measures against commission of terrorist acts.

Note: For orderly presentation, it is felt that it is useful to begin with Operative Para 2.

Section II: Financing of Terrorism: This Section addresses issues covered under Operative Para 1 of the Resolution on aspects such as financial flows, freezing of accounts and assets, contributions to funds for terrorist purpose, etc.

Section III: International Cooperation Against Terrorism: This Section deals with India's approach to international cooperation including bilateral and multilateral agreements, extradition arrangements, etc.

Section IV: External Support to Terrorism: This is a "confidential" Section wherein the extensive external support to Terrorism in India is documented. This Section is not for publication as it contains sensitive material.

Section I: Measures Against Terrorism:

1. Resolution 1373 Operative Para-2 reads as follows:

Decides also that all States shall:

(a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;

(b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;

(c) Deny safe heaven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;

(d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;

(e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;

(f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;

(g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents.

2. Based on the above, the Committee under the Security Council has formulated the following questions:

Sub-paragraph (a): What legislation or other measures are in place to give effect to this sub-paragraph? In particular, what offences in your country prohibit (i) **recruitment to terrorist groups** and (ii) **the supply of weapons** to terrorists? What other measures help prevent such activities?

Sub-paragraph (b): What other steps are being taken **to prevent the commission of terrorist acts**, and in particular, what early warning mechanisms exist to allow exchange of information with other states?

Sub-paragraph (c): What legislation or procedures exist **for denying safe haven to terrorists**, such as laws for excluding or expelling the types of individuals referred to in this sub-paragraph? It would be helpful if States supplied examples of any relevant action taken.

Sub-paragraph (d): What legislation or procedures exist to prevent terrorists acting from your territory against other states or citizens? It would be helpful if States supplied examples of any relevant action taken.

Sub-paragraph (e): What steps have been taken **to establish terrorist acts as serious criminal offences** and to ensure that the punishment reflects the seriousness of such terrorist acts? Please supply examples of any convictions obtained and the sentence given.

Sub-paragraph (f): What procedures and mechanisms are in place to assist other states? Please provide any available details of how these have been used in practice.

Sub-paragraph (g): How **do border controls in your country prevent the movement of terrorists**? How do your procedures for issuance of **identity papers and travel documents** support this? What measures exist to prevent their forgery etc?

3. India has waged a sustained war against Terrorism for over two decades. As a victim of Terrorism mainly sponsored from across its border, the Indian State and its people are cognizant of the consequences of and to sensitive to the need to strengthen measures to combat Terrorism.

Prevention of Terrorism Ordinance (POTO):

4. The Prevention of Terrorism Ordinance (POTO) was promulgated by the President of India in exercise of his powers conferred by Article 123(1) of the Constitution of India on October 24, 2001 (at Annexure). The POTO specifically aims to deal with all aspects of prevention of Terrorism. An Ordinance, once promulgated, has the same effect and force as any other law for the time being in force in India. An Ordinance has to be approved by the Parliament and the intended legislation is currently under consideration and discussion. The POTO in its existing form, or the Act as adopted by the Indian Parliament after due consideration, will be the comprehensive piece of legislation specifically to tackle Terrorism.

5. Features in Prevention of Terrorism Ordinance: The full text is at Appendix I. The POTO has 61 Sections and is divided into six Chapters. It has a territorial as well as extra-territorial application. Some prominent features are:

Section 3(1) of the Ordinance defines **"terrorist acts"** as acts done with the intent to threaten the unity or integrity of India or to strike terror in any section of the people by using weapons and explosive substances or other methods (chemical, biological etc.) in a manner as to cause or likely to cause death or injuries to any person or persons or loss or damage to property or disruption of essential supplies and services etc.

Membership of an Association declared as "Unlawful" under "Unlawful Activities (Prevention) Act, 1967" would also be treated as **"terrorist act."**

The act of raising funds intended for the purpose of terrorism shall also be treated as **"terrorist act"**.

Section 18 of the Ordinance defines **"terrorist organizations"** and provides for their ban under a prescribed procedure as laid down. Any person who is a member or supports or invites support for a terrorist organization by way of raising finances, arranging or participating in meetings or encouraging support to such organizations in any other way commits an offence under the Ordinance.

Possession of explosives and weapons of mass destruction: Section 4 of the Ordinance relates to possession of unauthorized arms, explosive substances or other lethal weapons capable of mass destruction and /or used in biological and chemical warfare. Such acts will also be treated as **"terrorist acts"**.

Enhanced punishment has been prescribed for violation of Arms Act, 1959, The Explosives Act, 1884, The Explosive Substances Act, 1908 or the Inflammable Substances Act, 1952 with the intention to aid any terrorist.

Financing of terrorism: Proceeds of terrorism, whether held by terrorist or by any other person liable to be forfeited **(Section 6).** Provisions of seizing properties, assets etc. of terrorist organization.

Under the Ordinance (Section 1(4) any person who commits an offence beyond India which is punishable under this Ordinance is to be dealt with according to the provisions of this Ordinance in the same manner as if such act had been committed in India. Activities of organizations/persons acting against India's interests while being based outside India are covered.

Special features/safeguards have been built in to prevent the possibility of misuse of the special power given to investigating authorities also keeping in view the observations of the Supreme Court of India.

6. The terrorist groups listed and banned under the Prevention of Terrorism Ordinance (POTO) are seen in the schedule under Section 18 of POTO. It is also provided under the Ordinance that this list could be modified, as necessary.

7. Apart from POTO, there are several other pieces of legislation under which unlawful acts or criminal acts which may amount to Terrorism can be dealt with. Some of the acts available are listed below with short descriptions of the areas covered:

(i) The Indian Penal Code, 1860;
(ii) The Code of Criminal Procedure, 1973;
(iii) The Arms Act, 1959;
(iv) The Explosives Act, 1884;
(v) The Explosive Substances Act, 1908;
(vi) The Indian Telegraph Act, 1885;
(vii) The Armed Forces (Special) Powers Act, 1958;
(viii) The Unlawful Activities (Prevention) Act, 1967;
(ix) The Anti-Hijacking Act, 1982;
(x) The Merchant Shipping Act, 1948;
(xi) The United Nations Security Council Act, 1947.

Indian Penal Code, 1860:

Indian Penal Code, 1860 is the comprehensive criminal law of the country which deals with all the general offences. It deals with offences against human body, offences relating to religion, offences against property, offences relating to criminal breach of contracts of service, offences relating to marriage, offences against public tranquility, State, elections, public justice etc.

However, IPC does not provide for preventive action against terrorists. It only prescribes punishment for criminal acts after the commission of such acts. However, after the commission of the crime/terrorist act, the offenders are charged under relevant sections of IPC along with relevant sections of specific laws relating to that offence (if any).

The Code of Criminal Procedure 1973:

This is the uniform law of criminal procedure for the whole of India. The various sections of the Code provide for conduct of criminal proceedings in the courts of law.

The provisions for preventive action against terrorists/criminals are very mild in Cr.P.C. As per section 41, a Police Officer may arrest a person without warrant provided there is information that the person is likely to commit a cognizable offence (Section 109, 110 Cr.PC). However, the offender has to be produced before Executive Magistrate within 24 hours of detention.

Section 151 Cr.P.C. provides for arrests to prevent the commission of cognizable offence. A Police Officer knowing of a design to commit any cognizable offence may arrest without orders from the Magistrate and without a warrant the person so designing if it appears to such officer that the commission of the offence cannot be otherwise be prevented. However, no person arrested under this section shall be detained in custody for more than 24 hours.

The Arms Act 1959:

The Arms Act 1959 deals with acquisition, possession, manufacture, import and export of arms in India. The Act provides certain safeguards to prevent access to arms and weapons falling in hands of terrorists/anti social elements. The salient features of the Act are

No person can acquire small arms/weapons unless he holds in this behalf a license issued in accordance with Arms Act (Section 3).

Punishment of violation of this section is imprisonment for a term not less than one year but extendable up to three years. The offence also carries a fine in addition to imprisonment.

Certain categories of arms like automatic/semi-automatic weapons, artillery, anti-aircraft and anti-tank fire arms, weapons designed to discharge chemical agents, other specified weapons have been categorized as "prohibited arms" (Section 2).

Similarly, "prohibited ammunition" has been defined in the Act to include chemical agents, rockets, bombs, grenade, shells, missiles and such other articles as specified by Central Government. (Sec 2).

There is complete prohibition of acquisition or possession or of manufacture or sale of prohibited arms or prohibited ammunition. (Section 7)

Punishment for violation of this section is imprisonment for a term which shall not be less than five years but which may extend to ten years and shall also been liable to fine.

Central Government has powers to declare certain areas as "disturbed areas" whenever it is satisfied that there is extensive disturbance of public peace and tranquility or imminent danger of such disturbances in any area.

Punishment for offences under Arms Act in disturbed areas are higher than those prescribed in peaceful areas. Punishment for such offences under Section 3 in such areas is imprisonment for a term which shall not be less than three years but which may extend to seven years.

The Explosives Act 1884:

This Act was enacted to provide a comprehensive law regulating the manufacture, storage, sale, conveyance and importation of explosives throughout India.

As per Section 9(B) of the Act, whoever manufactures, imports or exports any explosives in contravention of rules or conditions of license is liable for imprisonment up to three years or with fine, or with both.

Whoever possesses, uses, sells or transports any explosive in violation of rules/license conditions shall be punishable with imprisonment up to two years or with fine or with both.

In case of specially dangerous explosives the punishment for offences mentioned above extend up to imprisonment for three years or fine or with both.

The Explosive Substances Act, 1908:

This Act was framed as the provisions of Indian Explosive Act, 1884 which was framed to prevent accidents. The Indian Penal Code also does not provide for any penalty for making or possessing explosive substances with unlawful intent and it does not in other cases always provide such severe penalties as were equisite to meet the increasing number of crimes.

As per this Act, punishment for causing explosion likely to endanger life or property is imprisonment for a term up to ten years (Section 3).

Punishment for attempt to cause explosion or for making or keeping explosive with intent to endanger life or property is imprisonment for a term up to seven years (Section 4).

The Indian Telegraph Act, 1885:

Section 5 of the Indian Telegraph Act, 1885 provides that on the occurrence of any public emergency or in the interest of public safety, the Central Government or a State Government or any officer specially authorized in this behalf by the Central Government or a State Government may if satisfied that it is necessary or expedient so to do in the interest of sovereignty and integrity of India, security of the State, friendly relations with Foreign States or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing by order direct at any message or class of messages to or from any person or class of persons or relating to any particular subject brought for transmission by or transmitted or received by any Telegraph shall not be transmitted or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order.

This section authorizes Government to tap the phones communication of terrorist organizations or organized crime syndicates.

The Armed Forces (Special) Powers Act, 1958:

Section 3 of the said Act empowers Central or State Government to declare the whole or any part of State as "disturbed area" when in its opinion the situation there is so disturbed that use of Armed Forces in aid of civil power is necessary.

Section 4 of the said Act confers special powers to any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in Armed Forces in disturbed areas.

It allows the use of force against persons acting in contravention of any law or order for the time being in force in disturbed area.

To destroy any arms dump, shelter etc. from which armed attacks are made, any structure used for training camp, for armed volunteers or utilized as a hide out by armed gangs or absconders.

Arrest without warrant any person who has committed a cognizable offence or against a person who is likely to commit a cognizable offence.

Search and seizure of any premises without warrant.

The Unlawful Activities (Prevention) Act, 1967:

The object of this Act is to make powers available for dealing with activities directed against the integrity and sovereignty of India. "Unlawful activity" has been defined in relation to an individual or association as an action taken by such individual or association:

(i) which is intended, or supports any claim to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession,

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India;

"Unlawful association" has been defined as any association which has for its object any unlawful activity or encourages any unlawful activity or any activity punishable under section 153(A) or 153(B) of Indian Penal Code.

Section 7 of the said Act empowers the Central Government to prohibit the use of funds of an unlawful association. It effectively freezes the financial operations of an unlawful association.

Section 8 of the said Act empowers the Central Government to notify places used for the purpose of an unlawful association. It effectively restrains the use of moveable and immovable property by unlawful associations.

The punishment provided for unlawful activity is imprisonment up to seven years and fine. Any person assisting any unlawful activity is punishable for imprisonment up to five years or with fine or with both.

This was the first Act under which the assets of any terrorist organization could be frozen. The punishment provided for unlawful activity is also not commensurate with terrorist acts.

It provides for banning of organizations but it covers only those organizations who support cession or secession of a part of a territory of India from the Union or Acts which are intended to disrupt the sovereignty and territorial integrity of India.

The Anti-Hijacking Act, 1982:

A convention for suppression of unlawful seizure of aircraft was drawn up at the Diplomatic conference in The Hague in December, 1970. The Hague convention created a new international offence, the offence unlawful seizure of aircraft alias Hijacking. The convention covers offences committed by any person on board an aircraft in flight.

This Act was enacted to give effect to The Hague convention.

Section 4 of the said Act gives punishment for hijacking which shall be imprisonment for life and the person shall also be liable to fine.

Section 5 of the Act provides for punishment for acts of violence connected with hijacking. Any act of violence against any passenger or crew member is punishable with the same punishment with which the hijacker would have been punishable under any law for the time being in force in India if such act had been committed in India.

Section 7 provides that offences under section 4 and 5 shall be deemed to be extraditable offences.

The United Nations Security Council Act, 1947:

This act supplements other Acts, where necessary. Action can be taken against terrorist organisations, which are not banned under domestic legislation in India. As per the provisions of this Act, government can take necessary measures for implementation of the decisions of the UN Security Council.

8. It will be seen from the above that the specific questions raised in Operative Para-2 of UNSCR 1373 on issues inter-alia such as: steps being taken to prevent commission of terrorist acts; supply of weapons to terrorists; prohibition of recruitment to terrorist organisations; criminalisation of terrorist acts; are covered under these provisions.

9. Provisions relating to Passports, travel documents, visas are covered in the following paragraphs.

(a) Provisions in the Passport Manual to ensure that terrorists/suspected terrorist do not get passports:

Under Section 2 of the Passports Act, 1967, the passport authority is required to make such inquiry, as it may consider necessary before issuing a passport. The means of conducting such inquiry is through a police verification report, which is obtained through the State Police authorities. Most passports are issued after due police verification which inter-alia establishes the Indian nationality of the applicant. The police verification also establishes the antecedents of the applicant including any terrorist activity of the applicant or that of a suspected terrorist. In cases where a passport is issued without a Police Report for some reason, and a negative report is received later such passport applicants are contacted for clarification and where necessary, the passports are revoked or impounded. This system of issue of passports on Police Report overdue basis is not applicable in areas, which are sensitive from a security point of view. The list of States where passports are issued on police report overdue basis is periodically reviewed in consultation with the security agencies.

Under Clause 6(2) of the Passports Act, 1967, the Passport Authority has the power to refuse issue of passport to person in whose case issuing a passport is not in the interest of Security and Integrity of the Country or is not in Public Interest. The input regarding this is received from the concerned Security/Investigating Agencies.

(b) Passport (Entry into India) Act:

Foreigners Division, Ministry of Home Affairs (MHA) administers the Passport (Entry into India) Act, 1920. Powers under this act have been delegated to the State Governments. As per the provisions of this Act every person must be in possession of valid travel documents as defined in Passport (Entry into India) Rules, 1950. In case of foreigners, valid visa issued by the competent authority on the travel documents is also necessary. Violation of provisions of this Act attracts a penal provision of imprisonment up to a term of five years and with fine or with both.

(c) Provisions from the Visa Manual to ensure that suspected terrorists do not get visas to visit India:

Before issuing visas to foreigners, Indian Missions carry out several checks to ensure that visas are not granted to any persons in negative or suspect lists and thus to persons suspected of involvement in terrorist acts or are members of terrorist organisations.

The visa applicants are also interviewed, wherever necessary, to bring out facts which might have been purposefully suppressed or omitted to mention in their applications.

(d) The mechanism of blacklisting of terrorists:

Terrorists and other anti-social activists are blacklisted by Ministry of Home Affairs on the basis of inputs received from central intelligence agencies, State Governments and Indian Missions/Posts abroad. The names and personal particulars of such personnel are circulated by MHA to all Indian Missions and Posts abroad and all immigration check posts in India. The names are removed from the black list only after receiving recommendation/consent to this effect from the originating agency and others.

(e) Prior Reference Category (PRC)/NEGATIVE LIST:

A negative list is maintained to prevent the entry of undesirable foreigners into the country. Missions/other agencies do not issue visas to persons whose name figure on the list without prior clearance. This list is periodically reviewed for deletion/addition of names, based on various inputs.

(f) HOW OUR PASSPORT AND VISA PROCEDURE SUPPLEMENTS THESE BORDER CHECKS:

As per the provisions of the passport (Entry into India) Act, 1920 and the rules framed under it, every person (except the nationals of Bhutan and Nepal) are required to be in possession of valid travel documents for entry into India. In case of a foreigner a valid visa issued by a competent authority is also required for entry into India. Entry into India is allowed only from the specified entry points (Immigration check-posts). Any person found entering into India without travel documents is arrested and handed over to the local police for taking further necessary action. Persons arrested for entering into India without travel documents or from unspecified points are liable to be awarded imprisonment up to a period of five years and with fine or with both. Persons who repeat the violation are liable to be awarded double the penalty prescribed for such violation. The stay and movement of foreigner inside the country is also governed by other acts viz., Foreigners Act, Registration of Foreigners Act etc. and rules made there under.

Every foreigner who enters into India on a visa for more than 180 days is required to get himself registered with the concerned Foreigners Registration office within 14 days of his arrival in India. Pakistani nationals are required to get themselves registered within 24 hours. Afghan nationals are required to get themselves registered within 7 days.

Section II: Financing of Terrorism

10. Security Council Resolution 1373 in Operative Paragraph 1 states:

1. Decides that all States shall:

(a) Prevent and suppress the financing of terrorist acts;

(b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

(c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;

(d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

11. The guidelines issued by the Committee has the following questions with regard to Operative Paragraph 1 of Financial Flows:

Sub-paragraph (a) – What measures if any have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in your responses to questions on 1(b) to (d).

Sub-paragraph (b) – What are the offences and penalties in your country with respect to the activities listed in this sub-paragraph?

Sub-paragraph (c) – What legislation and procedures exist for freezing accounts and assets at banks and financial institutions? It would be helpful if States supplied examples of any relevant action taken.

Sub-paragraph (d) – What measures exist to prohibit the activities listed in this sub-paragraph?

12. **Introduction:** In describing the financial aspects related to Terrorism, some broad features of the Indian system need to be underlined; on the financial side traditionally there has been a highly regulated approach to foreign currency transactions and banking. Rules and regulations scattered over a number of Acts deal with several aspects (described below) and empower the Executive with wide powers to investigate; where necessary to prosecute; freeze and forfeit accounts or assets. At the same time, most transactions in the criminal world are unorganised, are informal, shadowy and as they are not through institutional mechanisms are extremely difficult to track, let alone offer evidence or proof for purposes of prosecution.

12(a). The criminal laws in general were used to prosecute and penalize terrorists. The need for special laws were felt when certain terrorists acts required to be prosecuted under a combination of legal provisions drawn from different legislations. The Indian Constitution provides for a Union List (subjects under the jurisdiction of the Central/Federal Government of India), States List (subjects under the jurisdiction of the State/Provincial Government), and Concurrent List (subjects under the jurisdiction of both). Subjects such as Arms, Explosive, Preventive Detention, National Security belong to the Union list; the Concurrent list deals with criminal laws and criminal procedure code.

Legal Provisions

13. As stated in the introduction, under the Indian Legislative framework, there are a number of laws, regulations and administrative arrangements to deal with illegal financial flows, and finances suspected with linkages to serious criminal activities. Depending on the nature of the criminal activity, one or more of these provisions could be used by the investigating and prosecuting authorities.

Broadly speaking the provisions work as follows:

A determination has to be made concerning criminal or terrorist activities of the individuals or entities. Based on such a determination, provisions as included in respective acts quoted below could be used for detention of persons, seizure, forfeiture of properties and prohibition on the use of funds.

(i) The Unlawful Activities (Prevention) Act, 1967 (Act 37, 1967)
(Power to prohibit the use of funds of an unlawful association)

As per the provisions of Section 3 read with Section 7 of the Unlawful Activities (Prevention) Act, 1967, the Central Government may, by order in writing, prohibit any person (who has custody of any moneys, securities or credits which are being used or are intended to be used for the purpose of the unlawful association) from paying, delivering, transferring or otherwise dealing in any manner whatsoever with such moneys, securities or credits or with any other moneys, securities or credits which may come into his custody after the making of the order.

(ii) Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974 (52 of 1974)
(Power to make orders detaining certain persons)

The Act provides for preventive detention in certain cases for the purposes of conversion and augmentation of foreign exchange and prevention of smuggling activities and for matters connected therewith. Section 3 of the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974, relates to power to make orders detaining any person with a view to preventing him from acting in any manner prejudicial to the conversion or augmentation of foreign exchange or with a view to prevent attempts at future smuggling or keeping of smuggled goods in future as referred to therein.

(iii) The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (Act 13 of 1976)
(Forfeiture of Property)

As per provisions of Section 7 read with provisions of Sections 2 and 6 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 the Competent Authority, under the Act is empowered to pass orders for forfeiture of the properties of persons as referred to under Section 2 of the Act.

(iv) The Foreign Exchange Management Act, 1999
(Reserve Bank's powers to issue directions to authorized person)

For the purpose of securing compliance with the provisions of the Foreign Exchange Management Act, 1999 Rules/Regulations/Notifications /directions made or issued there under, Reserve Bank may in terms of Section 11 of the Act give directions to the authorized persons in regard to making of payment or doing or desist from doing any act relating to foreign exchange or foreign security.

(v) Code of Criminal Procedure, 1973
(Power of Police Officer to seize certain property)

As per provisions of Section 102, Police Officer is empowered to seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances, which create suspicion of the commission of any offence.

(vi) Banking Regulation Act, 1949
(Power of the Reserve Bank to give directions)

Section 35A of the Banking Regulation Act, 1949 empowers the Reserve Bank to issue directions to banking companies generally or to any banking company in particular. Amongst other criterion for exercise of such power, the public interest is also one of the criteria.

(vii) Forfeiture of Illegally Acquired Property under the NDPS Act.

Illicit drug trade generates large profits for the traffickers. As the money so generated is unaccounted, there are inherent difficulties in utilising the same. The traffickers therefore apply various techniques to launder the money to conceal its origin and there after use the same for legitimate transactions. To divest the drug traffickers of the profits generated by their illegal activities, is a significant approach to curtail their activities and great emphasis was laid on this aspect by the UN General Assembly Special Session on Narcotic Drugs & Psychotropic Substance.

Provisions have been made in Chapter V A of the NDPS Act, 1985 for tracing, identification, freezing and forfeiture of all properties attributable to drug trafficking.

The property derived out of drug trafficking of any person, his associates or relative, convicted of an offence punishable under the Narcotic Drugs and Psychotropic Substances Act with imprisonment for a term of 10 years or more or who has been convicted of a similar offence by the Competent Court of criminal jurisdiction outside India or a person in respect of whom an order of detention has been made under Prevention of Illicit Trafficking in Narcotic Drugs & Psychotropic Substances Act 1988 and such order of detention has not been revoked or set aside or who has been arrested or against whom a warrant of arrest has been issued can be frozen. Such properties on the conviction of the said person or completion of his detention period are liable to forfeiture.

By a recent amendment, the entire process of money laundering has also been made a punishable offence under the Narcotic Drugs & Psychotropic Substances Act.

14. Note on freezing, seizing and forfeiture of illegally acquired property.

The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act 1976 (SAFEM (FOP)A), provides for forfeiture of illegally acquired property of the persons convicted under the Sea Customs Act, 1978, the Customs Act, 1962 and the Foreign Exchange Regulation Act, 1973 and the persons detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) provides for tracing, freezing, seizure and forfeiture of illegally acquired property of persons convicted under that Act or any corresponding law of any foreign country and those who are detained under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 and Jammu & Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

While the illegally acquired property covered under the respective Acts could be forfeited under both the above Acts, the NDPS Act also provides for tracing, freezing and seizing illegally acquired property. The Act also provides for forfeiture of the 'proceeds' of drug trafficking, including property acquired with such proceeds. Under the NDPS Act, officers who are in charge of police station and officers empowered under Section 53 of the Act can on receipt of information on holding of illegally acquired property take steps to trace and seize and if not possible to seize, freeze such illegally acquired property pending forfeiture. Orders of seizing or freezing have to be confirmed by the Competent Authority with in a period of 30 days. Once the property is due for forfeiture, the Competent Authority shall issue a notice for forfeiture to the affected persons. After giving them an opportunity to be heard, the Competent Authority may forfeit the illegally acquired property. Against the orders of the Competent Authority, the affected persons can go in appeal before the Appellate Tribunal for Forfeited Property.

Although participation in terrorism or other subversive activities are not grounds for forfeiture of the illegally acquired property under the above said Acts, since most of the terrorists commit offences like smuggling or drug trafficking, their property could be forfeited if they are either convicted under the relevant laws for smuggling or drug trafficking or against them orders for preventive detention are issued. As a matter of fact the main suspects of Mumbai serial blast case like Dawood Ibrahim, Tiger Memon, Iqbal Mirchi, Bhai Thakur and Mohd. Dossa were all involved in either smuggling or drug trafficking and at some point of time some orders of preventive detention were issued against them and on the basis of those orders their illegally acquired properties could be forfeited either under the SAFEM(FOP)A or under the NDPS Act.

Prevention of Terrorism Ordinance (POTO)

15. The Prevention of Terrorism Ordinance (POTO) was promulgated by the President of India in exercise of his powers conferred by Article 123(1) of the Constitution of India on October 24, 2001 (text at Annexure). (The Prevention of Organized Crime legislations in Karnataka, Maharashtra and Andhra Pradesh states are precursors of POTO; they deal with most the requirements of UNSCR. Other relevant legislations include Prevention of Unlawful Activities Act, Prevention of Disruptive Activities Act, Disturbed Areas Special Courts Act 1976, Terrorism Affected Areas (Special Courts) Act, 1984.) The POTO specifically aims to deal with all aspects of prevention of Terrorism. An Ordinance, once promulgated, has the same effect and force as any other law for the time being in force in India. An Ordinance has to be approved by the Parliament and the intended legislation is currently under consideration and discussion. The POTO in its existing form, or the Act as adopted by the Indian Parliament after due consideration, will be the comprehensive piece of legislation specifically to tackle Terrorism. (A description of the features of POTO is contained in Section I).

16. In POTO the term "Proceeds of Terrorism" has been defined in a broad manner to include all kinds of properties which:

(i) Have been derived or obtained from the commission of any terrorist act, or

(ii) Have been acquired through funds traceable to a terrorist act.

For this purpose the person in whose name such proceeds are standing or in whose possession they are recovered is immaterial.

Under POTO, a person also commits a terrorist act if he raises funds intended for purpose of terrorism.

Section III: UNSC 1373: Strengthening International Cooperation to Combat Terrorism

Operative Para-3 of 1373 reads as follows:

(a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;

(b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;

(c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;

(d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;

(e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);

(f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum seeker has not planned, facilitated or participated in the commission of terrorist acts;

(g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists.

The Committee under Security Council in its guidelines has raised the following questions with regard to Operative Para 3:

Sub-paragraph (a): What steps have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this sub-paragraph?

Sub-paragraph (b): What steps have been taken to exchange information and cooperate in the areas indicated in this sub-paragraph?

Sub-paragraph (c): What steps have been taken to cooperate in the areas indicated in this sub-paragraph?

Sub-paragraph (d): What are your government's intentions regarding signing and/or ratifying the conventions and protocols referred to in this sub-paragraph?

Sub-paragraph (e): Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this sub-paragraph.

Sub-paragraph (f): What legislation, procedures and mechanisms are in place for ensuring asylum seekers have not been involved in terrorist activity before granting refugee status. Please supply examples of any relevant cases.

Sub-paragraph (g): What procedures are in place to prevent the abuse of refugee status by terrorists? Please provide details of legislation and/or administrative procedures which prevent claims of political motivation being

recognised as grounds for refusing requests for the extradition of alleged terrorists. Please supply examples of any relevant cases.

17. India has consistently, over the decades, sought to intensify and strengthen international cooperation to combat the global phenomenon of terrorism through a variety of means.

BILATERAL MECHANISMS TO ADDRESS TERRORISM

18. Joint Working Groups

India has established Joint Working Groups with several key countries to exchange information and strengthen international cooperation to combat terrorism. In these Joint Working Groups there is an effort to explore ways of intensifying the exchange of information, especially regarding review of threat perceptions, early warnings, cooperation on administrative and judicial matters to prevent and suppress the commission of terrorist acts and to facilitate action against perpetrators of such acts. These Joint Working Groups meet periodically to review the status of cooperation in the fight against Terrorism. Apart from this, issues relating to the fight against terrorism are taken up in bilateral discussions.

19. Bilateral Treaties to Combat International Terrorism

India has entered into three types of bilateral treaties to combat international terrorism:

a. Agreements to Combat Terrorism and Organized Crime, Narcotic Drug offences, etc.

b. Extradition Treaties,

c. Treaties on Mutual Legal Assistance in Criminal Matters.

20. Bilateral agreements to combat terrorism and organized crime, etc.

These agreements are essentially framework agreements designed to facilitate exchange of operational information and development of joint programmes to combat organized crime and terrorism. Legally binding measures such as service of summons, search and seizure of persons, property or funds etc. are outside the scope of these agreements, as these subjects usually fall within the scope of treaties on mutual legal assistance in criminal matters. India has signed such agreements with Bulgaria, Croatia, China, Egypt, Oman, Italy, Romania and Russian Federation.

21. Extradition treaties

Extradition treaties are more focussed in operational scope and are designed to facilitate the transfer of fugitive offenders, suspected terrorists etc. so that they can stand trial in the State in which the offence is committed. Such treaties cover extradition in respect of almost all serious offences (i.e., offences punishable with a penalty of imprisonment of two years or more). The more recent treaties concluded by India provide for the 'no list' method for which extradition may be given. The recent treaties also deny the political exception plea as a defence against extradition.

India has concluded extradition treaties with Belgium, Bhutan, Canada, Hong Kong, Nepal Netherlands, Russia, Switzerland, UAE, UK, and USA. Such treaties have been signed, (but not yet exchanged), with Mongolia, Germany, Tunisia, Turkey and Uzbekistan. India has entered into extradition arrangements with Australia, Fiji, Papua New Guinea, Singapore, Sri Lanka, Sweden, Tanzania, and Thailand.

22. Bilateral Treaties on Mutual Legal Assistance in Criminal Matters

These treaties are designed to provide mutual legal assistance in criminal matters that are necessary for the prosecution of offences, searching persons and property in question, location of fugitives and property involved, transfer of witnesses and exhibits, freezing and confiscation of proceeds of crime, etc., and play a useful role in the punishment of crime and prosecution of offenders.

India has signed agreements on Mutual Legal Assistance in Criminal Matters with Canada, Switzerland, Turkey, Russian Federation, UAE, UK and Uzbekistan and signed, (but not yet exchanged), the agreements with France, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan and USA. The domestic legislation governing the procedural aspects of such cooperation is governed by the Code of Criminal Procedure, 1973 (sply ss. 105, 166A, 166B and Chapter VII-A of Cr. P.C. 1973).

MULTILATERAL ARRANGEMENTS AND AGREEMENTS

23. International Conventions on Terrorism

Of the twelve International Sectoral Conventions on Terrorism which have been concluded under the aegis of the UN, India is a party to eleven of these conventions except the International Convention on the Physical Protection of Nuclear Material, 1979 and has taken steps to effectively implement its commitments under these Conventions. (List of Conventions to which India is a party is at Appendix II.)

There is proposed legislation, i.e., Prevention of Terrorism Ordinance to cover/address measures to suppress financing of Terrorism (which has been covered in Sections I and II in the report).

24. Regional Conventions on Terrorism

India is a party to the SAARC Regional Convention on Suppression of Terrorism, 1987. Pursuant to this convention, an enabling legislation titled "The SAARC Convention (Suppression of Terrorism) Act" was enacted in 1993.

25. Arrangements for Consideration of Status of Refugee/Asylum

There is no specific law in India to deal with refugees or asylum seekers and such cases are dealt with under existing laws pertaining to foreigners. "Foreigners" fleeing from neighboring countries into India due to ethnic violence, threat to their lives etc. are allowed to stay in India temporarily on humanitarian grounds. As and when the situation in their home country improves they are encouraged to return. Such foreigners who have been allowed to stay in India on humanitarian grounds may also be issued registration certificates and extensions are granted on their RCs for specified periods. Movements of all such refugees are monitored by specifically designated authorities who register foreigners. All efforts are made to ensure that suspected Terrorists do not misuse these arrangements to seek refuge in India.

OTHER MODALITIES OF INTERNATIONAL COOPERATION TO COMBAT TERRORISM

26. Cooperation with Interpol

India has been a member of Interpol since 1946 and there is an Indian member on secondment to the Interpol. There is considerable liaison with various Interpol member countries.

Within India, the Director CBI has been designated as the Head of National Central Bureau (NCB) India, Interpol, New Delhi. Under the supervision of the Director CBI there is an Interpol Wing in the Central Bureau of Investigation, whose day to day activities are supervised by an officer of the rank of Superintendent of Police who is designated as Assistant Director, Interpol.

Additionally, an informal arrangement has been made with all the States of the Union to have them designate one senior officer as an Interpol Liaison Officer (ILO) for helping the Indian Chapter of Interpol in carrying out its activities in India.

27. **The Mechanics of Red Corner Alerts**

Under Interpol there is a mechanism, i.e., issue of Red Corner Alerts, which is designed to facilitate international search for terrorists, fugitives from justice etc. A Red Corner Notice (RCN) is a Circular or a Notification issued by Interpol, upon a request from the member countries, calling for vigilance at border check posts etc so as to arrest and detain and possibly extradite them.

Whenever investigative agency draws a conclusion upon investigation that criminal or a suspected terrorist has fled national jurisdiction, a request is made to Interpol for issue of a Red Corner Alert. Interpol then assess whether the request is violative of any of the basic principles of coordination and cooperation of Interpol. Essentially, this scrutiny is restricted to seeing that the offences for which an RCN is sought to be issued are not political offences and they are not an affront to the sovereignty of any of member country. Another aspect which may be considered is whether the offences for which an RCN is sought to be issued is one for which extradition can be sought and granted as per the internationally acceptable norms. Interpol then issues a Red Corner Notice which clearly mentions that Extradition may be possible on the basis of bilateral agreements or Treaties, between the member countries.

This is a modality of cooperation that India has supported and used.

28. **Enhanced Cooperation and Full Implementation of Security Council Resolutions Relating to Terrorism**

As a victim of terrorism, India has, over the last two decades, consistently sought to priortise the need to combat terrorism in international fora, particularly in the UN. India has been supportive of all measures within the UN in the General Assembly, in the Sixth Committee and in the UN Security Council to address the complex global phenomenon of terrorism. It has supported the Security Council Resolutions 1269 and 1368 which note that terrorism poses a threat to international peace and security.

India has also supported and fully implemented resolutions 1267, 1333 and 1363 relating to terrorism by the Taliban regime in Afghanistan and had fully implemented the provisions of these resolutions.

Appendix I

To be Introduced in Lok Sabha

Bill No. 125 of 2001

THE PREVENTION OF TERRORISM BILL, 2001

ARRANGEMENT OF CLAUSES

CHAPTER I

PRELIMINARY

CLAUSES

1. Short title, extent, application, commencement, duration and savings.
2. Definitions.

CHAPTER II

PUNISHMENT FOR, AND MEASURES FOR DEALING WITH, TERRORIST ACTIVITIES

3. Punishment for terrorist acts.
4. Possession of certain unauthorized arms, etc.
5. Enhanced penalties.
6. Holding of proceeds of terrorism illegal.
7. Powers of investigating officers and appeal against order of Designated Authority.
8. Forfeiture of proceeds of terrorism.
9. Issue of show cause notice before forfeiture of proceeds of terrorism.
10. Appeal.
11. Order of forfeiture not to interfere with other punishments.
12. Claims by third party.
13. Powers of Designated Authority.
14. Obligation to furnish information.
15. Certain transfers to be null and void.
16. Forfeiture of property of certain persons.
17. Company to transfer shares to Government.

CHAPTER III

TERRORIST ORGANISATIONS

18. Declaration of an organisation as a terrorist organisation.
19. Denotification of a terrorist organisation.
20. Offence relating to membership of a terrorist organisation.
21. Offence relating to support given to a terrorist organisation.
22. Fund raising for a terrorist organisation to be an offence.

CHAPTER IV

SPECIAL COURTS

23. Special Courts.
24. Place of sitting.
25. Jurisdiction of Special Courts.
26. Power of Special Courts with respect to other offences.

CLAUSES

27. Power to direct for samples, etc.
28. Public Prosecutors.
29. Procedure and powers of Special Courts.
30. Protection of witnesses.
31. Trial by Special Courts to have precedence.
32. Certain confessions made to police officers to be taken into consideration.
33. Power to transfer cases to regular courts.
34. Appeal.

CHAPTER V

INTERCEPTION OF COMMUNICATION IN CERTAIN CASES

35. Definitions.
36. Appointment of Competent Authority.
37. Application for authorisation of interception of wire, electronic or oral communication.
38. Decision by Competent Authority on application for interception.
39. Submission of order of interception to Review Committee.
40. Duration of an order of interception, etc.
41. Authority competent to carry out interception.
42. Interception of communication in emergency.
43. Protection of information collected.
44. Admissibility of evidence collected through the interception of communications.
45. Review of authorisation order.
46. Interception and disclosure of wire, electronic or oral communications prohibited.
47. Annual report of interceptions.

CHAPTER VI

MISCELLANEOUS

48. Modified application of certain provisions of the Code.
49. Cognizance of offences.
50. Officers competent to investigate offences under this Act.
51. Arrest.
52. Presumption as to offences under section 3.
53. Bar of jurisdiction of courts, etc.
54. Savings.
55. Overriding effect.
56. Protection of action taken in good faith.
57. Punishment and compensation for malicious action.
58. Impounding of passport and arms licence of person chargesheeted under the Act.
59. Review Committees.
60. Power of High Courts to make rules.
61. Power to make rules.
62. Orders and rules to be laid before Houses of Parliament.
63. Repeal and saving.

SCHEDULE.

To be Introduced in Lok Sabha

Bill No. 125 of 2001

THE PREVENTION OF TERRORISM BILL, 2001

A

BILL

to make provisions for the prevention of, and for dealing with, terrorist activities and for matters connected therewith.

Be it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

CHAPTER I

Preliminary

1. (*1*) This Act may be called the Prevention of Terrorism Act, 2001. Short title, extent, application, commencement, duration and savings.

(*2*) It extends to the whole of India.

(*3*) Every person shall be liable to punishment under this Act for every act or omission contrary to the provisions thereof, of which he is held guilty in India.

(4) Any person who commits an offence beyond India which is punishable under this Act shall be dealt with according to the provisions of this Act in the same manner as if such act had been committed in India.

(5) The provisions of this Act apply also to—

(a) citizens of India outside India;

(b) persons in the service of the Government, wherever they may be; and

(c) persons on ships and aircrafts, registered in India, wherever they may be.

(6) It shall be deemed to have come into force on the 24th day of October, 2001 and shall remain in force for a period of three years from the date of its commencement, but its expiry under the operation of this sub-section shall not affect —

(a) the previous operation of, or anything duly done or suffered under this Act, or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under this Act, or

(c) any penalty, forfeiture or punishment incurred in respect of any offence under this Act, or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and, any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not expired.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) "Code" means the Code of Criminal Procedure, 1973; 2 of 1974

(b) "Designated Authority" shall mean such officer of the Central Government not below the rank of Joint Secretary to the Government, or such officer of the State Government not below the rank of Secretary to the Government, as the case may be, as may be specified by the Central Government or as the case may be, the State Government, by a notification published in the Official Gazette;

(c) "proceeds of terrorism" shall mean all kinds of properties which have been derived or obtained from commission of any terrorist act or have been acquired through funds traceable to a terrorist act, and shall include cash, irrespective of person in whose name such proceeds are standing or in whose possession they are found;

(d) "property" means property and assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets;

(e) "Public Prosecutor" means a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor appointed under section 28 and includes any person acting under the directions of the Public Prosecutor;

(f) "Special Court" means a Special Court constituted under section 23;

(g) "terrorist act" has the meaning assigned to it in sub-section (1) of section 3, and the expression "terrorist" shall be construed accordingly;

(*h*) "State Government", in relation to a Union territory, means the Administrator thereof;

(*i*) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

(*2*) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

CHAPTER II

PUNISHMENT FOR, AND MEASURES FOR DEALING WITH, TERRORIST ACTIVITIES

Punishment for terrorist acts.

3. (*1*) Whoever, —

(*a*) with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire arms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature or by any other means whatsoever, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community or causes damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act;

(*b*) is or continues to be a member of an association declared unlawful under the Unlawful Activities (Prevention) Act, 1967, or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property,

37 of 1967

commits a terrorist act.

Explanation.— For the purposes of this sub-section, "a terrorist act" shall include the act of raising funds intended for the purpose of terrorism.

(2) Whoever commits a terrorist act, shall,—

(*i*) if such act has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to fine;

(*ii*) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(*3*) Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(*4*) Whoever voluntarily harbours or conceals, or attempts to harbour or conceal any person knowing that such person is a terrorist shall be punishable with imprisonment for a

term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine:

Provided that this sub-section shall not apply to any case in which the harbour or concealment is by the husband or wife of the offender.

(*5*) Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist acts, shall be punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both.

Explanation.— For the purposes of this sub-section, "terrorist organisation" means an organisation which is concerned with or involved in terrorism.

(*6*) Whoever knowingly holds any property derived or obtained from commission of any terrorist act or has been acquired through the terrorist funds shall be punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both.

(*7*) Whoever threatens any person who is a witness or any other person in whom such witness may be interested, with violence, or wrongfully restrains or confines the witness, or any other person in whom the witness may be interested, or does any other unlawful act with the said intent, shall be punishable with imprisonment which may extend to three years and fine.

Possession of certain unauthorised arms, etc.

4. Where any person is in unauthorised possession of any,—

(*a*) arms or ammunition specified in columns (*2*) and (*3*) of Category I or Category III (a) of Schedule I to the Arms Rules, 1962, in a notified area,

(*b*) bombs, dynamite or hazardous explosive substances or other lethal weapons capable of mass destruction or biological or chemical substances of warfare in any area, whether notified or not,

he shall be guilty of terrorist act notwithstanding anything contained in any other law for the time being in force, and be punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both.

Explanation:— In this section "notified area" means such area as the State Government may, by notification in the Official Gazette, specify.

Enhanced penalties.

5. (*1*) If any person with intent to aid any terrorist contravenes any provision of, or any rule made under, the Arms Act, 1959, the Explosives Act, 1884, the Explosive Substances Act, 1908 or the Inflammable Substances Act, 1952, he shall, notwithstand ing anything contained in any of the aforesaid Acts or the rules made thereunder, be punishable with imprisonment for a term which may extend to imprisonment for life and shall also be liable to fine. 54 of 4 of 6 of 20 of

(*2*) For the purposes of this section, any person who attempts to contravene or abets, or does any act preparatory to the contravention of any provision of any law, rule or order, shall be deemed to have contravened that provision, and the provisions of sub-section (1) shall, in relation to such person, have effect subject to the modification that the reference to "imprisonment for life" shall be construed as a reference to "imprisonment for ten years".

Holding of proceeds of terrorism illegal.

6. (*1*) No person shall hold or be in possession of any proceeds of terrorism.

(*2*) Proceeds of terrorism, whether held by a terrorist or by any other person and whether or not such person is prosecuted or convicted under this Act, shall be liable to be

forfeited to the Central Government or the State Government, as the case may be, in the manner provided under this Chapter.

Powers of investigating officers and appeal against order of Designated Authority.

7. (*1*) If an officer (not below the rank of Superintendent of Police) investigating an offence committed under this Act, has reason to believe that any property in relation to which an investigation is being conducted, represents proceeds of terrorism, he shall, with the prior approval in writing of the Director General of the Police of the State in which such property is situated, make an order seizing such property and where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order, or of the Designated Authority, before whom the properties seized or attached are produced and a copy of such order shall be served on the person concerned.

(*2*) The investigating officer shall duly inform the Designated Authority within forty-eight hours of the seizure or attachment of such property.

(*3*) It shall be open to the Designated Authority before whom the seized or attached properties are produced either to confirm or revoke the order of attachment so issued:

Provided that an opportunity of making a representation by the person whose property is being attached shall be given.

(*4*) In the case of immovable property attached by the investigating officer, it shall be deemed to have been produced before the Designated Authority when the investigating officer notifies his report and places it at the disposal of the Designated Authority.

(*5*) The investigating officer may seize and detain any cash to which this Chapter applies if he has reasonable grounds for suspecting that—

(*a*) it is intended to be used for the purposes of terrorism;

(*b*) it forms the whole or part of the resources of an organisation declared as terrorist organisation under this Act:

Provided that the cash seized under this sub-section by the investigating officer shall be released not later than the period of forty-eight hours beginning with the time when it is seized unless the matter involving the cash is before the Designated Authority and such authority passes an order allowing its retention beyond forty-eight hours.

Explanation.—For the purposes of this sub-section, "cash" means—

(*a*) coins and notes in any currency;

(*b*) postal orders;

(*c*) traveller's cheques;

(*d*) banker's drafts; and

(*e*) such other monetary instruments as the Central Government or, as the case may be, the State Government may specify by an order made in writing.

(*6*) Any person aggrieved by an order made by the Designated Authority may prefer an appeal to the Special Court and the Special Court may either confirm the order of attachement of property or seizure so made or revoke such order and release the property.

Forfeiture of proceeds of terrorism.

8. Where any property is seized or attached on the ground that it constitutes proceeds of terrorism and the Special Court is satisfied in this regard under sub-section (*6*) of section 7, it may order forfeiture of such property, whether or not the person from whose possession it is seized or attached, is prosecuted in a Special Court for an offence under this Act.

Issue of show cause notice before forfeiture of proceeds of terrorism.

9. (*1*) No order forfeiting any proceeds of terrorism shall be made under section 8 unless the person holding or in possession of such proceeds is given a notice in writing informing him of the grounds on which it is proposed to forfeit the proceeds of terrorism and such person is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of forfeiture and is also given a reasonable opportunity of being heard in the matter.

(*2*) No order of forfeiture shall be made under sub-section (*1*), if such person establishes that he is a *bona fide* transferee of such proceeds for value without knowing that they represent proceeds of terrorism.

(*3*) It shall be competent for the Special Court to make an order in respect of property seized or attached,—

(*a*) directing it to be sold if it is a perishable property and the provisions of section 459 of the Code shall, as nearly as may be practicable, apply to the net proceeds of such sale;

(*b*) nominating any officer of the Central or State Government, in the case of any other property, to perform the function of the Administrator of such property subject to such conditions as may be specified by the Special Court.

Appeal.

10. (*1*) Any person aggrieved by an order of forfeiture under section 8 may, within one month from the date of the receipt of such order, appeal to the High Court within whose jurisdiction, the Special Court, who passed the order appealed against, is situated.

(*2*) Where an order under section 8 is modified or annulled by the High Court or where in a prosecution instituted for the contravention of the provisions of this Act, the person against whom an order of forfeiture has been made under section 8 is acquitted, such property shall be returned to him and in either case if it is not possible for any reason to return the forfeited property, such person shall be paid the price therefor as if the property had been sold to the Central Government with reasonable interest calculated from the day of seizure of the property and such price shall be determined in the manner prescribed.

Order of forfeiture not to interfere with other punishments.

11. The order of forfeiture made under this Act by the Special Court, shall not prevent the infliction of any other punishment to which the person affected thereby is liable under this Act.

Claims by third party.

12. (*1*) Where any claim is preferred, or any objection is made to the seizure of any property under section 7 on the ground that such property is not liable to seizure, the Designated Authority before whom such property is produced, shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the Designated Authority considers that the claim or objection was designed to cause unnecessary delay.

(*2*) In case claimant or objector establishes that the property specified in the notice issued under section 9 is not liable to be attached or forfeited under the Act, the said notice shall be withdrawn or modified accordingly. .

Powers of Designated Authority.

13. The Designated Authority, acting under the provisions of this Act, shall have all the powers of a Civil Court required for making a full and fair enquiry into the matter before it.

Obligation to furnish information.

14. (*1*) Notwithstanding anything contained in any other law, the officer investigating any offence under this Act, with prior approval in writing of an officer not below the rank of a Superintendent of Police, may require any officer or authority of the Central Government or a State Government or a local authority or a Bank or a company, or a firm or any other institution, establishment, organisation or any individual to furnish information in their possession in relation to such offence, on points or matters, where the

investigating officer has reason to believe that such information will be useful for, or relevant to, the purposes of this Act.

(*2*) Failure to furnish the information called for under sub-section (*1*), or deliberately furnishing false information shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(*3*) Notwithstanding anything contained in the Code, the offence under sub-section (*1*) shall be tried as a summary case and the procedure prescribed in Chapter XXI of the said Code [except sub-section (*2*) of section 262] shall be applicable thereto.

Certain transfers to be null and void.

15. Where, after the issue of an order under section 7 or issue of a notice under section 9, any property referred to in the said order or notice is transferred by any mode whatsoever, such transfer shall, for the purpose of the proceedings under this Act, be ignored and if such property is subsequently forfeited, the transfer of such property shall be deemed to be null and void.

Forfeiture of property of certain persons.

16. (*1*) Where any person is accused of any offence under this Act, it shall be open to the Special Court trying him to pass an order that all or any of the properties, movable or immovable or both belonging to him, shall, during the period of such trial, be attached, if not already attached under this Act.

(*2*) Where a person has been convicted of any offence punishable under this Act, the Special Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the Central Government or the State Government, as the case may be, free from all encumbrances.

Company to transfer shares to Government.

17. Where any shares in a company stand forfeited to the Central Government or the State Government, as the case may be, under this Act, then, the company shall on receipt of the order of the Special Court, notwithstanding anything contained in the Companies Act, 1 of 1956. 1956, or the articles of association of the company, forthwith register the Central Government or the State Government, as the case may be, as the transferee of such shares.

CHAPTER III

TERRORIST ORGANISATIONS

Declaration of an organisation as a terrorist organisation.

18. (*1*) For the purposes of this Act, an organisation is a terrorist organisation if—

(*a*) it is listed in the Schedule, or

(*b*) it operates under the same name as an organisation listed in that Schedule.

(*2*) The Central Government may by order, in the Official Gazette,-

(*a*) add an organisation to the Schedule;

(*b*) remove an organisation from that Schedule;

(*c*) amend that Schedule in some other way.

(*3*) The Central Government may exercise its power under clause (*a*) of sub-section (*2*) in respect of an organisation only if it believes that it is involved in terrorism.

(*4*) For the purposes of sub-section (*3*), an organisation shall be deemed to be involved in terrorism if it—

(*a*) commits or participates in acts of terrorism,

(*b*) prepares for terrorism,

(*c*) promotes or encourages terrorism, or

(*d*) is otherwise involved in terrorism.

Denotification of a terrorist organisation.

19. (*1*) An application may be made to the Central Government for the exercise of its power under clause (*b*) of sub-section (*2*) of section 18 to remove an organisation from the Schedule.

(*2*) An application may be made by—

(*a*) the organisation, or

(*b*) any person affected by inclusion of the organisation in the Schedule as a terrorist organisation.

(*3*) The Central Government may make rules to prescribe the procedure for admission and disposal of an application made under this section.

(*4*) Where an application under sub-section (*1*) has been refused, the applicant may apply for a review to the Review Committee constituted by the Central Government under sub-section (*1*) of section 59 within one month from the date of receipt of the order by the applicant.

(*5*) The Review Committee may allow an application for review against refusal to remove an organisation from the Schedule, if it considers that the decision to refuse was flawed when considered in the light of the principles applicable on an application for judicial review.

(*6*) Where the Review Committee allows review under sub-section (*5*) by or in respect of an organisation, it may make an order under this sub-section.

(*7*) Where an order is made under sub-section (*6*), the Central Government shall, as soon as the certified copy of the order is received by it, make an order removing the organisation from the list in the Schedule.

Offence relating to membership of a terrorist organisation.

20. (*1*) A person commits an offence if he belongs or professes to belong to a terrorist organisation:

Provided that this sub-section shall not apply where the person charged is able to prove—

(*a*) that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member; and

(*b*) that he has not taken part in the activities of the organisation at any time during its inclusion in the Schedule as a terrorist organisation.

(*2*) A person guilty of an offence under this section shall be liable, on conviction, to imprisonment for a term not exceeding ten years or with fine or with both.

Offence relating to support given to a terrorist organisation.

21. (*1*) A person commits an offence if—

(*a*) he invites support for a terrorist organisation, and

(*b*) the support is not, or is not restricted to, the provision of money or other property within the meaning of section 22.

(*2*) A person commits an offence if he arranges, manages or assists in arranging or managing a meeting which he knows is—

(*a*) to support a terrorist organisation,

(*b*) to further the activities of a terrorist organisation, or

(*c*) to be addressed by a person who belongs or professes to belong to a terrorist organisation.

(*3*) A person commits an offence if he addresses a meeting for the purpose of encouraging support for a terrorist organisation or to further its activities.

(*4*) A person guilty of an offence under this section shall be liable on conviction, to imprisonment for a term not exceeding ten years or with fine or with both.

Explanation.— For the purposes of this section, the expression "meeting" means a meeting of three or more persons whether or not the public are admitted.

Fund raising for a terrorist organisation to be an offence.

22. (*1*) A person commits an offence if he—

(*a*) invites another to provide money or other property, and

(*b*) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.

(*2*) A person commits an offence if he—

(*a*) receives money or other property, and

(*b*) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.

(*3*) A person commits an offence if he-

(*a*) provides money or other property, and

(*b*) knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.

(*4*) In this section, a reference to the provision of money or other property is a reference to its being given, lent or otherwise made available, whether or not for consideration.

(*5*) A person guilty of an offence under this section shall be liable on conviction, to imprisonment for a term not exceeding fourteen years or with fine or with both.

CHAPTER IV

SPECIAL COURTS

Special Courts.

23. (*1*) The Central Government or a State Government may, by notification in the Official Gazette, constitute one or more Special Courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification.

(*2*) Where a notification constituting a Special Court for any area or areas or for any case or class or group of cases is issued by the Central Government under sub-section (*1*), and a notification constituting a Special Court for the same area or areas or for the same case or class or group of cases has also been issued by the State Government under that sub-section, the Special Court constituted by the Central Government, whether the notification constituting such Court is issued before or after the issue of the notification constituting the Special Court by the State Government, shall have, and the Special Court constituted by the State Government shall not have, jurisdiction to try any offence committed in that area or areas or, as the case may be, the case or class or group of cases and all cases pending before any Special Court constituted by the State Government shall stand transferred to the Special Court constituted by the Central Government.

(*3*) Where any question arises as to the jurisdiction of any Special Court, it shall be referred to the Central Government whose decision in the matter shall be final.

(*4*) A Special Court shall be presided over by a judge to be appointed by the Central Government or, as the case may be, the State Government, with the concurrence of the Chief Justice of the High Court.

(*5*) The Central Government or, as the case may be, the State Government may also appoint, with the concurrence of the Chief Justice of the High Court, additional judges to exercise jurisdiction of a Special Court.

(6) A person shall not be qualified for appointment as a judge or an additional judge of a Special Court unless he is, immediately before such appointment, a sessions judge or an additional sessions judge in any State.

(7) For the removal of doubts, it is hereby provided that the attainment, by a person appointed as a judge or an additional judge of a Special Court, of the age of superannuation under the rules applicable to him in the service to which he belongs, shall not affect his continuance as such judge or additional judge.

(8) Where any additional judge or additional judges is or are appointed in a Special Court, the judge of the Special Court may, from time to time, by general or special order, in writing, provide for the distribution of business of the Special Court among all judges including himself and the additional judge or additional judges and also for the disposal of urgent business in the event of his absence or the absence of any additional judge.

Place of sitting.

24. A Special Court may, on its own motion, or on an application made by the Public Prosecutor and if it considers it expedient or desirable so to do, sit for any of its proceedings at any place other than its ordinary place of sitting:

Provided that nothing in this section shall be construed to change the place of sitting of a Special Court constituted by a State Government to any place outside that State.

Jurisdiction of Special Courts.

25. (1) Notwithstanding anything contained in the Code, every offence punishable under any provision of this Act shall be triable only by the Special Court within whose local jurisdiction it was committed or, as the case may be, by the Special Court constituted for trying such offence under section 23.

(2) If, having regard to the exigencies of the situation prevailing in a State,—

(i) it is not possible to have a fair, impartial or speedy trial; or

(ii) it is not feasible to have the trial without occasioning the breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor and a judge of the Special Court or any of them; or

(iii) it is not otherwise in the interests of justice,

the Supreme Court may transfer any case pending before a Special Court to any other Special Court within that State or in any other State and the High Court may transfer any case pending before a Special Court situated in that State to any other Special Court within the State.

(3) The Supreme Court or the High Court, as the case may be, may act under this section either on the application of the Central Government or a party interested and any such application shall be made by motion, which shall, except when the applicant is the Attorney-General of India, be supported by an affidavit or affirmation.

Power of Special Courts with respect to other offences.

26. (1) When trying any offence, a Special Court may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or under any other law, the Special Court may convict such person of such other offence and pass any sentence or award punishment authorised by this Act or such rule or, as the case may be, under such other law.

Power to direct for samples, etc.

27. (1) When a police officer investigating a case requests the Court of a Chief Judicial Magistrate or the Court of a Chief Metropolitan Magistrate in writing for obtaining samples of hand writing, finger prints, foot prints, photographs, blood, saliva, semen, hair, voice of any accused person, reasonably suspected to be involved in the commission of an offence

under this Act, it shall be lawful for the Court of a Chief Judicial Magistrate or the Court of a Chief Metropolitan Magistrate to direct that such samples be given by the accused person to the police officer either through a medical practitioner or otherwise, as the case may be.

(2) If any accused person refuses to give samples as provided in sub-section (1), the court shall draw adverse inference against the accused.

Public Prosecutors.

28. (1) For every Special Court, the Central Government or, as the case may be, the State Government, shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

Provided that the Central Government or, as the case may be, the State Government, may also appoint for any case or class or group of cases, a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

Procedure and powers of Special Courts.

29. (1) Subject to the provisions of section 49, a Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts that constitute such offence or upon a police report of such facts.

(2) Where an offence triable by a Special Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Special Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code, shall so far as may be, apply to such trial:

Provided that when, in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is undesirable to try it in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to a Special Court as they apply to and in relation to a Magistrate:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding one year and with fine which may extend to rupees five lakh.

(3) Subject to the other provisions of this Act, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

(4) Subject to the other provisions of this Act, every case transferred to a Special Court under section 25 shall be dealt with as if such case had been transferred under section 406 of the Code to such Special Court.

(5) Notwithstanding anything contained in the Code, but subject to the provisions of section 299 of the Code, a Special Court may, if it thinks fit and for reasons to be recorded by it, proceed with the trial in the absence of the accused or his pleader and record the evidence of any witness, subject to the right of the accused to recall the witness for cross-examination.

Protection of witnesses.

30. (*1*) Notwithstanding anything contained in the Code, the proceedings under this Act may, for reasons to be recorded in writing, be held *in camera* if the Special Court so desires.

(*2*) A Special Court, if on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, is satisfied that the life of such witness is in danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret.

(*3*) In particular, and without prejudice to the generality of the provisions of sub-section (*2*), the measures which a Special Court may take under that sub-section may include—

(*a*) the holding of the proceedings at a place to be decided by the Special Court;

(*b*) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;

(*c*) the issuing of any directions for securing that the identity and address of the witnesses are not disclosed;

(*d*) a decision that it is in the public interest to order that all or any of the proceedings pending before such a court shall not be published in any manner.

(*4*) Any person who contravenes any decision or direction issued under sub-section (*3*) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

Trial by Special Courts to have precedence.

31. The trial under this Act of any offence by a Special Court shall have precedence over the trial of any other case against the accused in any other court (not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall remain in abeyance.

Certain confessions made to police officers to be taken into consideration.

32. (*1*) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872, but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical or electronic device like cassettes, tapes or sound tracks from out of which sound or images can be reproduced, shall be admissible in the trial of such person for an offence under this Act or rules made thereunder. 1 of 1872.

(*2*) A police officer shall, before recording any confession made by a person under sub-section (*1*), explain to such person in writing that he is not bound to make a confession and that if he does so, it may be used against him:

Provided that where such person prefers to remain silent, the police officer shall not compel or induce him to make any confession.

(*3*) The confession shall be recorded in an atmosphere free from threat or inducement and shall be in the same language in which the person makes it.

(*4*) The person from whom a confession has been recorded under sub-section (*1*), shall be produced before the Court of a Chief Metropolitan Magistrate or the Court of a Chief Judicial Magistrate along with the original statement of confession, written or recorded on mechanical or electronic device within forty-eight hours.

(*5*) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate, shall, record the statement, if any, made by the person so produced and get his signature or thumb impression and if there is any complaint of torture, such person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than an Assistant Civil Surgeon and thereafter, he shall be sent to judicial custody.

Power to transfer cases to regular courts.

33. Where, after taking cognizance of any offence, a Special Court is of the opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for the trial of such offence to any court having jurisdiction under the Code and the court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence.

Appeal.

34. (*1*) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

Explanation.— For the purposes of this section, "High Court" means a High Court within whose jurisdiction, a Special Court which passed the judgment, sentence or order, is situated.

(*2*) Every appeal under sub-section (*1*) shall be heard by a bench of two Judges of the High Court.

(*3*) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

(*4*) Notwithstanding anything contained in sub-section (*3*) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(*5*) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

CHAPTER V

INTERCEPTION OF COMMUNICATION IN CERTAIN CASES

Definitions.

35. In this Chapter, unless the context otherwise requires,—

(*a*) "electronic communication" means any transmission of signs, signals, writings, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system that affects inland or foreign commerce but does not include,—

(*i*) the radio portion of a cordless telephone communication that is transmitted between the wireless telephone hand-set and the base unit;

(*ii*) any wire or oral communication;

(*iii*) any communication made through a tone only paging device; or

(*iv*) any communication from a tracking device;

(*b*) "intercept" means the aural or other acquisition of the contents by wire, electronic or oral communication through the use of any electronic, mechanical or other device;

(*c*) "oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation but such term does not include any electronic communication;

(*d*) "wire communication" means any aural transmission made in whole or part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of connection, between the point of origin and the point of reception (including the use of such connection in switching station) and such term includes any electronic storage of such communication.

Appointment of Competent Authority.

36. The Central Government or the State Government, as the case may be, may appoint an officer not below the rank of Secretary to the Government in the case of State Government and not below the rank of Joint Secretary to the Government in the case of Central Government, to be the Competent Authority for the purposes of this Chapter.

Application for authorisation of interception of wire, electronic or oral communication.

37. (*1*) A police officer not below the rank of Superintendent of Police supervising the investigation of any terrorist act under this Act may submit an application in writing to the Competent Authority for an order authorising or approving the interception of wire, electronic or oral communication by the investigating officer when he believes that such interception may provide, or has provided evidence of any offence involving a terrorist act.

(*2*) Each application shall include the following information,—

(*a*) the identity of the investigating officer making the application, and the head of the department authorising the application;

(*b*) a statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including—

(*i*) details as to the offence of terrorist act that has been, is being, or is about to be committed;

(*ii*) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

(*iii*) a particular description of the type of communications sought to be intercepted; and

(*iv*) the identity of the person, if known, committing the terrorist act whose communications are to be intercepted;

(*c*) a statement of the period of time for which the interception is required to be maintained, if the nature of the enquiry is such that the authorisation of interception should not automatically terminate after the described type of communication has been first obtained;

(*d*) a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter; and

(*e*) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(*3*) The Competent Authority may require the applicant to furnish additional oral or documentary evidence in support of the application.

Decision by Competent Authority on application for interception.

38. (*1*) Upon such application, the Competent Authority may reject the application, or issue an order, as requested or as modified, authorising or approving interception of wire, electronic or oral communications, if the Competent Authority determines on the basis of the facts submitted by the applicant that—

(*a*) there is a probable cause for belief that an individual is committing, has committed, or is about to commit a particular offence described and made punishable under sections 3 and 6 of this Act;

(*b*) there is a probable cause of belief that particular communications concerning that offence may be obtained through such interception;

(*c*) there is probable cause of belief that the facilities from which, or the place where, the wire, electronic or oral communications are to be intercepted are being used or are about to be used, in connection with the commission of such offence, leased to, or are listed in the name of or commonly used by such person.

(*2*) Each order by the Competent Authority authorising or approving the interception of any wire, electronic or oral communication under this section shall specify—

(*a*) the identity of the person, if known, whose communications are to be intercepted;

(*b*) the nature and location of the communication facilities as to which, or the place where, authority to intercept is granted;

(*c*) a particular description of the type of communication sought to be intercepted, and a statement of the particular offence to which it relates;

(*d*) the identity of the agency authorised to intercept the communications, and the person authorising the application; and

(*e*) the period of time during which such interception is authorised , including a statement as to whether or not the interception shall automatically terminate after the described communication has been first obtained.

Submission of order of interception to Review Committee.

39. (*1*) The Competent Authority shall immediately after passing the order under sub-section (*1*) of section 38, but in any case not later than seven days from the passing of the order, submit a copy of the same to the Review Committee constituted under section 59 along with all the relevant underlying papers, record and his own findings, in respect of the said order, for consideration and approval of the order by the Review Committee.

(*2*) An order authorising the interception of a wire, electronic or oral communication under this section shall, upon request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian or other person shall furnish to the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider, landlord, custodian, or person is providing to the person whose communications are to be intercepted.

Duration of an order of interception, etc.

40. (*1*) No order issued under this section may authorise or approve the interception of any wire, electronic or oral communication for any period longer than is necessary to achieve the objective of the authorisation, nor in any event longer than sixty days and such sixty day's period shall begin on the day immediately preceding the day on which the investigation officer first begins to conduct an interception under the order or ten days after order is issued whichever is earlier.

(*2*) The extension of an order may be granted, but only upon an application for an extension made in accordance with sub-section (*1*) of section 37 and the Competent Authority making the findings required by sub-section (*1*) of section 38, and the period of such extension shall be no longer than the Competent Authority deems necessary to achieve the purposes for which it was granted and in no event for longer than sixty days at a time.

(*3*) Every order and extension thereof shall contain a provision that the authorisation to intercept shall be executed as soon as practicable and shall be conducted in such manner as to minimise the interception of communications not otherwise subject to interception under this section and shall terminate upon attainment of the authorised objective, or in any event on the expiry of the period of said order or extension thereof.

Authority competent to carry out interception.

41. (*1*) An interception under this Chapter may be conducted in whole or in part by a public servant, acting under the supervision of the investigating officer authorised to conduct the interception.

(*2*) Whenever an order authorising an interception is issued pursuant to this section, the order may require reports to be made to the Competent Authority who issued the order showing that progress has been made towards achievement of the authorised objective and the need for continued interception and such report shall be made at such intervals as the Competent Authority may require.

Interception of communication in emergency.

42. (*1*) Notwithstanding anything contained in any other provision of this section, an officer not below the rank of Additional Director General of Police or a police officer of equivalent rank who reasonably determines that—

(*a*) an emergency situation exists that involves—

(*i*) immediate danger of death or serious physical injury to any person;

(ii) conspiratorial activities threatening the security or interest of the State;

or

(iii) conspiratorial activities, characteristic of a terrorist act, that requires a wire, electronic or oral communication to be intercepted before an order from the Competent Authority authorising such interception can, with due diligence, be obtained, and

(b) there are grounds on which an order should be issued under this section to authorize such interception,

may authorise, in writing, the investigating officer to intercept such wire, electronic or oral communication, if an application for an order approving the interception is made in accordance with the provisions of sub-sections (1) and (2) of section 37 within forty-eight hours after the interception has occurred, or begins to occur.

(2) In the absence of an order approving the interception made under sub-section(1), such interception shall immediately terminate when the communication sought is obtained or when the application for the order is rejected, whichever is earlier, and in the event of an application for permitting interception being rejected under sub-section (1) of section 38 or an application under sub-section (1) of section 42 for approval being rejected, or in any other case where the interception is terminated without an order having been issued, the contents of any wire, electronic, or oral communication intercepted shall be treated as having been obtained in violation of this section.

Protection of information collected

43.(a) The contents of any wire, electronic or oral communication intercepted by any means authorised by this section shall as far as possible, be recorded on tape or wire or other comparable device and shall be done in such manner as to protect the recording from editing or other alterations.

(b) Immediately upon the expiration of the period of order, or extension thereof, such recording shall be made available to the Competent Authority issuing such order and shall be sealed under his directions and kept in the custody of such person or authority as the Competent Authority orders, and such recordings shall not be destroyed except upon an order of the Competent Authority and in any event shall be kept for ten years.

© Applications made and orders issued under this section shall be sealed by the Competent Authority and custody of the applications and orders shall be kept in such manner as the Competent Authority directs, and shall not be destroyed

except on an order of the Competent Authority, and in any event shall be kept for ten years.

Admissibility of evidence collected through the interception of communications

44. Notwithstanding anything in the Code or in any other law for the time being in force, the evidence collected through the interception of wire, electronic or oral communication under this Chapter or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court unless each accused has been furnished with a copy of the order of the Competent Authority, and accompanying application, under which the interception was authorized or approved not less than ten days before trial, hearing or proceeding.

Provided further that, the period of ten days may be waived by the judge trying the matter, if he comes to the conclusion that it was not possible to furnish the accused with the above information ten days before the trial, hearing or proceeding and that the accused will not be prejudiced by the delay in receiving such information.

Review of authorisation order.

45.(I) The Review Committee constituted by the Central Government or the State Government, as the case may be, shall review every order passed by the Competent Authority under section 38.

(2) Every order passed by the Competent Authority under section 38, or disapproved by the officer under section 42, shall be placed before the Review Committee, which shall be considered by the Review Committee within ten days after its receipt, to decide whether the order, was necessary, reasonable and justified.

(3) The Review Committee, after examining the entire record and holding such enquiry, if any, deemed necessary may, by order in writing, either approve the order passed by the Competent Authority or may issue order disapproving the same.

(4) On issue of an order of disapproval by the Review Committee, the interception, if any, already commenced shall be forthwith discontinued and the intercepted communication, if any, in the form of tape, wire or other device shall, thereupon, not be admissible as evidence in any case and shall be directed to be destroyed.

Interception and disclosure of wire, electronic or oral communications prohibited.

46. Except as otherwise specifically provided in section 38, any police officer who—

(a) intentionally intercepts, endeavours to intercept, or procures any other person to intercept or endeavour to intercept any wire, electronic or oral communication;

(b) intentionally uses, endeavours to use, or procures any other person to use or endeavours to use any electronic, mechanical or other device to intercept any oral communication when—

(i) such device is affixed to, or otherwise transmits a signal through a wire, cable, or other like connection used in wire communication; or

(ii) such device transmits communications by radio, or interferes with the transmission of such communication;

(c) intentionally discloses, or endeavours to disclose, to any other person the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this Chapter;

(d) intentionally uses, or endeavours to use, the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this Chapter; or

(e) intentionally discloses, or endeavours to disclose, to any other unauthorised person the contents of any wire, electronic or oral communication, intercepted by means authorised by section 38;

(f) intentionally continues the interception of wire, electronic or oral communication after the issue of an order of rejection by the Competent Authority under this Chapter;

(g) intentionally continues the interception of wire, electronic or oral communication after the issue of an order of disapproval by the Review Committee under sub-section (3) of section 45,

shall for such violation be punishable with imprisonment for a term which may extend to one year and with fine up to rupees fifty thousand.

Annual report of interceptions.

47. (1) The Central Government and the State Government, as the case may be, shall cause an annual report to be prepared giving a full account of,—

(i) the number of applications for authorisation of interceptions received by the Competent Authority from the Police Department in which prosecutions have been launched;

(ii) the number of such applications permitted or rejected;

(*iii*) the number of interceptions carried out in emergency situations and the number of approvals granted or rejected in such matters;

(*iv*) the number of prosecutions launched based on such interceptions and convictions resulting from such interceptions, along with an explanatory memorandum giving general assessment of the utility and importance of the interceptions authorised.

(*2*) An annual report shall be laid by the State Government before the State Legislature within three months of the completion of every calendar year:

Provided that, if the State Government is of the opinion that the inclusion of any matter in the annual report would be prejudicial to the security of the State or to the prevention or detection of any terrorist act, the State Government may exclude such matter from being included in such annual report.

(*3*) An annual report shall be laid by the Central Government before each House of Parliament within three months of the completion of every calendar year:

Provided that, if the Central Government is of the opinion that the inclusion of any matter in the annual report would be prejudicial to the security of the country or to the prevention or detection of any terrorist act, the Central Government may exclude such matter from being included in such annual report.

CHAPTER VI

MISCELLANEOUS

Modified application of certain provisions of the Code.

48. (*1*) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.

(*2*) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (*2*),—

(*a*) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days", respectively; and

(*b*) after the proviso, the following provisos shall be inserted, namely :—

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Special Court shall extend the said period up to one hundred and eighty days, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person from judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.".

(*3*) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that—

(*a*) the reference in sub-section (*1*) thereof—

(*i*) to "the State Government" shall be construed as a reference to "the Central Government or the State Government",

(*ii*) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(*b*) the reference in sub-section (*2*) thereof, to "State Government" shall be construed as a reference to "Central Government or the State Government, as the case may be".

(*4*) Sections 366, 367 and 371 of the Code shall apply in relation to a case involving an offence triable by a Special Court subject to the modification that the reference to "Court of Session", wherever occurring therein, shall be construed as the reference to "Special Court".

(*5*) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

(*6*) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond unless the Court gives the Public Prosecutor an opportunity of being heard.

(*7*) Where the Public Prosecutor opposes the application of the accused to release on bail, no person accused of an offence punishable under this Act or any rule made thereunder shall be released on bail until the court is satisfied that there are grounds for believing that he is not guilty of committing such offence:

Provided that after the expiry of a period of one year from the date of detention of the accused for an offence under this Act, the provisions of sub-section (*6*) of this section shall apply.

(*8*) The restrictions on granting of bail specified in sub-sections (*6*) and (*7*) are in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(*9*) Notwithstanding anything contained in sub-sections (*6*), (*7*) and (*8*), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.

Cognizance of offences.

49. No Court shall take cognizance of any offence under this Act without the previous sanction of the Central Government or, as the case may be, the State Government.

Officers competent to investigate offences under this Act.

50. Notwithstanding anything contained in the Code, no police officer, —

(*a*) in the case of the Delhi Special Police Establishment, below the rank of a Deputy Superintendent of Police or a police officer of equivalent rank;

(*b*) in the metropolitan areas of Mumbai, Kolkata, Chennai and Ahmedabad and any other metropolitan area notified as such under sub-section (*1*) of section 8 of the Code, below the rank of an Assistant Commissioner of Police;

(*c*) in any other case not relatable to clause (*a*) or clause (*b*), below the rank of a Deputy Superintendent of Police or a police officer of an equivalent rank,

shall investigate any offence punishable under this Act.

Arrest.

51. (*1*) Where a police officer arrests a person, he shall prepare a custody memo of the person arrested.

(*2*) The person arrested shall be informed of his right to consult a legal practitioner as soon as he is brought to the police station.

(*3*) Whenever any person is arrested, information of his arrest shall be immediately communicated by the police officer to a family member or in his absence to a relative of such person by telegram, telephone or by any other means and this fact shall be recorded by the police officer under the signature of the person arrested.

(*4*) The person arrested shall be permitted to meet the legal practitioner representing him during the course of interrogation of the accused person:

Provided that nothing in this sub-section shall entitle the legal practitioner to remain present throughout the period of interrogation.

Presumption as to offences under section 3.

52. (*1*) In a prosecution for an offence under sub-section (*1*) of section 3, if it is proved—

(*a*) that the arms or explosives or any other substances specified in section 4 were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature, were used in the commission of such offence; or

(*b*) that the finger-prints of the accused were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence,

the Special Court shall draw adverse inference against the accused.

(*2*) In a prosecution for an offence under sub-section (*3*) of section 3, if it is proved that the accused rendered any financial assistance to a person, having knowledge that such person is accused of, or reasonably suspected of, an offence under that section, the Special Court shall draw adverse inference against the accused.

Bar of jurisdiction of courts, etc.

53. No civil court or other authority shall have or, be entitled to, exercise any jurisdiction, powers or authority in relation to the matters referred to in section 19 and section 39 of the Act.

Savings.

54. (*1*) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under any law relating to the naval, military or air forces or other armed forces of the Union.

(*2*) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (*1*), a Special Court shall be deemed to be a court of ordinary criminal justice.

Overriding effect.

55. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

Protection of action taken in good faith.

56. No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer or authority of the Central Government or State Government or any other authority on whom powers have been conferred under this Act, for anything which is in good faith done or purported to be done in pursuance of this Act:

Provided that no suit, prosecution or other legal proceedings shall lie against any serving member or retired member of the armed forces or other para-military forces in respect of any action taken or purported to be taken by him in good faith, in the course of any operation directed towards combating terrorism.

Punishment and compensation for malicious action.

57. (*1*) Any police officer who exercises powers corruptly or maliciously, knowing that there are no reasonable grounds for proceeding under this Act, shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

(*2*) If the Special Court is of the opinion that any person has been corruptly or maliciously proceeded against under this Act, the court may award such compensation as it deems fit to the person, so proceeded against and it shall be paid by the officer, person, authority or Government, as may be specified in the order.

58. Notwithstanding anything contained in any other law for the time being in force, the passport and the arms licence of a person, who is charge sheeted for having committed any offence under this Act, shall be deemed to have been impounded for such period as the Special Court may deem fit.

Impounding of passport and arms licence of person charge-sheeted under the Act.

59. (*1*) The Central Government and each State Government shall, whenever necessary, constitute one or more Review Committees for the purposes of this Act.

Review Committees.

(*2*) Every such Committee shall consist of a Chairperson and such other members not exceeding three and possessing such qualifications as may be prescribed.

(*3*) A Chairperson of the Committee shall be a person who is, or who has been, a Judge of a High Court, who shall be appointed by the Central Government, or as the case may be, the State Government, so however, that the concurrence of the Chief Justice of the High Court shall be obtained in the case of a sitting Judge:

Provided that in the case of a Union territory, the appointment of a person who is a Judge of the High Court of a State shall be made as a Chairperson with the concurrence of the Chief Justice of the concerned High Court.

60. The High Courts may, by notifications in the Official Gazette, make such rules, if any, as they may deem necessary for carrying out the provisions of this Act relating to Special Courts within their territories.

Power of High Courts to make rules.

61. (*1*) Without prejudice to the powers of the High Courts to make rules under section 60, the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

Power to make rules.

(*2*) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(*a*) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient and the removal of such persons from such areas;

(*b*) the entry into, and search of,—

(*i*) any vehicle, vessel or aircraft; or

(*ii*) any place, whatsoever,

reasonably suspected of being used for committing the offences referred to in section 3 or section 4 or for manufacturing or storing anything for the commission of any such offence;

(*c*) conferring powers upon,—

(*i*) the Central Government;

(*ii*) a State Government;

(*iii*) an Administrator of a Union territory under article 239 of the Constitution;

(*iv*) an officer of the Central Government not lower in rank than that of a Joint Secretary; or

(*v*) an officer of a State Government not lower in rank than that of a District Magistrate,

to make general or special orders to prevent or deal with terrorist acts;

(*d*) the arrest and trial of persons contravening any of the rules or any order made thereunder;

(*e*) the punishment of any person who contravenes or attempts to contravene or abets or attempts to abet the contravention of any rule or order made thereunder with imprisonment for a term which may extend to one year or fine or both.

(*f*) providing for the seizure and detention of any property in respect of which such contravention, attempt or abetment as is referred to in clause (*e*) has been committed and for the adjudication of such seizure and detention, whether by any court or by any other authority;

(*g*) determination of the price of the forfeited property under sub-section (*2*) of section 10;

(*h*) the procedure of making application under sub-section (*3*) of section 19;

(i) the qualifications of the members of the Review Committee under sub-section (*2*) of section 59.

Orders and rules to be laid before Houses of Parliament.

62. Every order and every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the order or rule or both Houses agree that the order or rule should not be made, the order or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order or rule.

Repeal and saving.

63. (*1*) The Prevention of Terrorism Ordinance, 2001, is hereby repealed. Ord. 9 of 2001.

(*2*) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

SCHEDULE

(*See* section 18)

TERRORIST ORGANISATIONS

1. BABBAR KHALSA INTERNATIONAL.
2. KHALISTAN COMMANDO FORCE.
3. KHALISTAN ZINDABAD FORCE.
4. INTERNATIONAL SIKH YOUTH FEDERATION.
5. LASHKAR-E-TAIBA / PASBAN-E-AHLE HADIS.
6. JAISH-E-MOHAMMED / TAHRIK-E-FURQAN.
7. HARKAT-UL-MUJAHIDEEN / HARKAT-UL-ANSAR / HARKAT-UL-JEHAD-E-ISLAMI.
8. HIZB-UL-MUJAHIDEEN / HIZB-ULMUJAHIDEEN PIR PANJAL REGIMENT.
9. AL-UMAR-MUJAHIDEEN.
10. JAMMU AND KASHMIR ISLAMIC FRONT.
11. UNITED LEBERATION FRONT OF ASSAM (ULFA).
12. NATIONAL DEMOCRATIC FRONT OF BODOLAND (NDFB).
13. PEOPLE'S LIBERATION ARMY (PLA).
14. UNITED NATIONAL LIBERATION FRONT (UNLF).
15. PEOPLE'S REVOLUTIONARY PARTY OF KANGLLIPALK (PREPAK).
16. KANLEIPAK COMMUNIST PARTY (KCP).
17. KANGLEI YAOL KANBA LUP (KYKL)
18. MANIPUR PEOPLE'S LIBRATION FRONT (MPLF).
19. ALL TRIPURA TIGER FORCE.
20. NATIONAL LIBERATION FRONT OF TRIPURA.
21. LIBERATION TIGERS OF TAMIL EELAM (LTTE).
22. STUDENTS ISLAMIC MOVEMENT OF INDIA.
23. DEENDAR ANJUMAN.

STATEMENT OF OBJECTS AND REASONS

The country faces multifarious challenges in the management of its internal security. There is an upsurge of terrorist activities, intensification of cross border terrorist activities and insurgent groups in different parts of the country. Very often, organized crime and terrorist activities are closely interlinked. Terrorism has now acquired global dimensions and has become a challenge for the entire world. The reach and methods adopted by terrorist groups and organizations take advantage of modern means of communication and technology using high-tech facilities available in the form of communication systems, transport, sophisticated arms and various other means. This has enabled them to strike and create terror among people at will. The existing criminal justice system is not designed to deal with the types of heinous crimes with which the proposed law deals with.

2. In view of the situation, as stated above, it was felt necessary to enact a legislation for the prevention of, and for dealing with terrorists' activities. However, sufficient safeguards are sought to be provided in the proposed law to prevent the possibility of its misuse.

3. Circumstances existed which rendered it necessary for the President to promulgate the Prevention of Terrorism Ordinance, 2001 on 24th October, 2001.

4. The Prevention of Terrorism Bill, 2001 seeks to replace the aforesaid Ordinance.

NEW DELHI;
The 4th December, 2001.

L. K. ADVANI.

Notes on clauses

Clause 1.—This clause makes provision for short-title, extent, application, commencement, duration and savings. Sub-clause (4) makes the provisions of the Bill applicable to any person even beyond India if he commits an offence punishable under this legislation.

Clause 2.—This clause makes provision for the definition of the terms used in the Bill. Sub-clause (1) (c) defines 'proceeds of terrorism' as all kinds of properties which have been derived or obtained from commission of any terrorist act or have been acquired through funds traceable to a terrorist act which will include cash irrespective of person in whose name such proceeds are standing or in whose possession they are found.

Clause 3.—Defines the acts of terrorism which are punishable under the Bill. This clause makes provisions for punishment for terrorist acts. It provides for—

(*i*) punishment of death or imprisonment for life to a person who has committed a terrorist act which has resulted in the death of any person [sub-clause (2)(i)];

(*ii*) punishment to a person who conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of a terrorist act or any act preparatory to a terrorist act [sub-clause (3)];

(*iii*) punishment to a person who voluntarily harbours or conceals any person knowing that such a person is a terrorist. The proviso to sub-clause (4) exempts any case in which the harbour or concealment is by the husband or wife of the offender. [sub-clause (4)];

(*iv*) punishment to a member of a terrorist gang or terrorist organization which is involved in terrorist acts [sub-clause (5)];

(*v*) punishment to a person who knowingly holds any property derived or obtained from commission of any terrorist act or has been acquired through the terrorist funds [sub-clause (6)];

(*vi*) protection of the witness by providing for punishment to a person who threatens a witness with violence or wrongfully restrains or confines the witness or commits any unlawful act with the above intention [sub-clause (7)];

Clause 4.—This clause provides for punishment to a person who is in unauthorized possession of arms and ammunition specified in columns (2) and (3) of Category I or Category III (a) of Schedule I to the Arms Rules, 1962, in a notified area. The clause also provides for punishment of unauthorised possession of bombs, dynamite or hazardous explosive substances or other lethal weapons of mass destruction or biological or chemical substances of warfare in any area.

Clause 5.—This clause provides for enhanced penalties to a person who with intention to aid any terrorist contravenes any provision of or rule made under the Arms Act, 1959, the Explosives Act, 1884, the Explosive Substances Act, 1908 or the Inflammable Substances Act, 1952.

Clause 6.—This clause bars the holding or possession or any proceeds of terrorism by any person.

Clause 7.—This clause empowers an officer not below the rank of Superintendent of Police investigating an offence committed under this Bill to make an order with the prior approval of the Director General of Police of the State, seizing such property or an order of

attachment where it is not practicable to seize that property which he has reason to believe in relation to which an investigation is being conducted, represents proceeds of terrorism.

This clause empowers the investigating officer to seize and detain any cash if he has reasonable grounds for suspecting that (a) it is intended to be used for the purposes of terrorism; (b) it forms the whole or part of the resources of an organization declared as terrorist organization under this Bill.

The proviso to sub-clause (5) provides that the cash seized shall be released not later than the period of forty-eight hours beginning with the time when it is seized unless the matter involving the cash is before the designated authorities and such authority, the court passes an order allowing its retention beyond forty-eight hours.

Clause 8.—This clause provides for forfeiture of proceeds of terrorism by the Special Court.

Clause 9.—This clause provides that a show cause notice shall be given in writing before an order forfeiting any proceeds of terrorism is made under clause 8 of this Bill.

Clause 10.—This clause provides for appeal to the High Court against the order of the Special Court for forfeiture under clause 8, within one month.

Clause 11.—This clause provides that the order of forfeiture under clause 8 does not interfere with other punishments which the person affected is liable under this Bill.

Clause 12.—This clause provides for investigation by the Designated Authority or as into the claim or objection preferred to the seizure of any property under clause 7.

Clause 13.—This clause confers the powers of a Civil Court on the Designated Authority.

Clause 14.—This clause provides that an officer investigating any offence under the Bill, with prior approval in writing of an officer not below the rank of Superintendent of Police may require any officer or authority of the Central Government, or a State Government or a local authority or a Bank or a Company, or a firm or any other institution, establishment, organisation or any individual to furnish information in their possession in relation to such offence, on points or matters, where the investigating officer has reason to believe that such information would be useful or relevant to the purposes of this Bill.

Sub-clause (2) of this clause provides for punishment for failure to furnish information called for under sub-clause (*1*).

Clause 15.—This clause provides that after issue of an order under clause 7 or issue of a show cause notice under clause 9, transfer of a property referred to in the said order or notice shall be deemed to be null and void.

Clause 16.—This clause provides that it shall be open to the Special Court trying any person accused of an offence under the Bill to pass an order attaching all or any of the properties, movable or immovable or both belonging to him during the period of the trial.

Clause 17.—This clause provides that where any shares in a company stand forfeited to the Central Government or the State Government, as the case may be, the company shall forthwith register the Central Government or the State Government, as the case may be, as the transferee of such shares notwithstanding the provisions in the Companies Act, 1956 or the Articles of Association of the company.

Clause 18.—This clause provides for declaration of an organisation as a terrorist organisation.

Clause 19.—This clause provides for application for de-notification of a terrorist organisation.

Clauses 20, 21 and 22.—These clauses provide for offences relating to membership of a terrorist organisation, support and fund raising for terrorist organisations.

Clauses 23, 24, 25, 26 and 27.—These clauses provide for constitution of Special Courts to try offences committed under the Bill, their jurisdiction, and their powers with respect to other offences.

Clause 28.—This clause provides for appointment of Public Prosecutor for every Special Courts.

Clause 29.—This clause provides for procedure and powers of the Special Courts.

Clause 30.—This clause makes provision for protection of witnesses.

Clause 31.—This clause provides that trial of an offence under this Bill by any Special Court against accused gets precedence over trial of any other offence in any other Courts (not being Special Courts).

Clause 32.—This clause provides for admissibility of confessions made to a police officer under certain conditions that such confessions have to be made before a police officer not lower in rank than that of a Superintendent of Police and unlike as in the Terrorist and Disruptive Activities (Prevention) Act, 1987 have to be further recorded with a Chief Judicial Magistrate within forty-eight hours.

Clause 33.—This clause provides that a Special Court may transfer the trial of the case to a regular court if the Special Court is of the opinion that the offence is not triable by it.

Clause 34.—This clause provides for appeal against any judgment, sentence or order not being an interlocutory in nature.

Clause 35.—This clause provides for definition of a 'electronic communication', 'intercept', 'oral communication' and 'wire communication' for the purpose of the clauses in Chapter V dealing with interception of communication in certain cases.

Clause 36.—This clause provides for appointment of the Competent Authority for the purposes of Chapter V.

Clauses 37 and 38.—These clauses provide for the procedure and decision for interception of the wire, electronic and oral communications.

Clause 39.—This clause provides that the Competent authority which has passed an order under clause 38(1), may submit a copy of the order within the stipulated time to the Review Committee constituted under clause 59.

Clause 40.—This clause provides for the duration of an order of interception of electronic, wire and oral communication.

Clause 41.—This clause provides that an interception under Chapter V may be conducted by a public servant, acting under the supervision of the investigating officer authorised to conduct the interception.

Clause 42.—This clause provides that an officer not below the rank of Additional Director General of Police or a police officer of equivalent rank may authorise interception under Chapter V without the prior permission of the Competent Authority under certain circumstances and conditions.

Clause 43.—This clause provides for protection of information collected through interception under Chapter V.

Clause 44.—This clause provides that the evidence collected through interception of communications under Chapter V is admissible as evidence against the accused in the Court during the trial of a case.

Clause 45.—This clause provides that the Review Committee constituted by the Central Government or the State Governments, as the case may be, review every order passed by the Competent Authority under clause 38.

Clause 46.—This clause prohibits unauthorised interception of communication and also disclosure of intercepted communications to unauthorised persons. The clause also provides for punishment for violation of the clause.

Clause 47.—This clause provides that the Central Government and the State Government, as the case may be, shall prepare annual reports of the full account of the applications for interception, the number of such applications permitted or rejected, number of interceptions carried out in emergency situation and the number of prosecutions and convictions resulting from such interceptions. Such annual reports are to be laid before the House of Parliament or State Legislature, as the case may be, within the stipulated time.

Clause 48.—This clause provides for modified applications of sections 2, 167, 268, 366, 367, 371 and 438 of the Code of Criminal Procedure, 1973 in case of a proceeding under the Bill.

Clause 49.—This clause provides that no Court shall take cognizance of any offence under this Bill without the previous sanction of the Central Government or the State Governments, as the case may be.

Clause 50.—This clause provides that no police officer below the rank of the Deputy Superintendent of Police or equivalent rank is competent to investigate an offence under this Bill.

Clause 51.—This clause provides for the procedure of a arrest of a person under this Bill.

Clause 52.—This clause provides that the Special Court may draw adverse inference against the accused if arms or explosives or any other substances specified in clause 4 are recovered from the possession of the accused or the finger prints of the accused are found at the place of the offence.

Clause 53.—This clause bars jurisdiction of civil court or any other authority in relation to matters related to clause 19 and clause 39 of this Bill.

Clause 54.—This clause provides that the jurisdiction exercisable by and the procedure applicable to, any court or other authority under any law relating to the naval, military and air force or other armed forces of the Union will not be affected by this Bill.

Clause 55.—This clause provides that the provision of the Bill shall have overriding effect over the provisions of other enactments.

Clause 56.—This clause provides for protection against prosecution or other legal proceedings for action taken in good faith by the Central Government or a State Government or any officer or authority of that Government under the Bill.

Clause 57.—This clause provides for punishment in cases where any police officer exercises powers under the Bill corruptly or maliciously.

Clause 58.—This clause provides for impounding of passport and arms licence of a person chargesheeted for having committed an offence under the Bill.

Clause 59.—This clause provides for constitution of Review Committee by the Central Government or the State Governments, as the case may be, for the purpose of this Bill.

Clause 60.—This clause confers upon the High Courts the power to make rules relating to Special Courts.

Clause 61.—This clause confers powers upon the Central Government to make rules for carrying out the provisions of the Bill.

Clause 62.—This clause provides that the orders and rules made by the Central Government under the Bill shall be laid before each House of Parliament within the stipulated time.

Clause 63.—This clause seeks to repeal the Prevention of Terrorism Ordinance, 2001.

FINANCIAL MEMORANDUM

Clause 23 of the Prevention of Terrorism Bill, 2001 provides for constitution of Special Courts by the Central Government or the State Government and also for appointment of Judges and Additional Judges of those Courts. Clause 28 of the said Bill provides for appointment of Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor by the Central Government or the State Government, as the case may be.

2. The expenditure towards the setting up of Special Courts by the State Governments and towards salary and allowances of the Judges, Additional Judges, Public Prosecutors, Additional Public Prosecutors and Special Public Prosecutors and the staff of such courts will be defrayed out of the Consolidated Fund of the States concerned. The expenditure towards setting up of Special Courts by the Central Government in any State or Union territory will be met out of the Consolidated Fund of India. The likely expenditure on each Special Court and on the salary and allowances of the Judges, Additional Judges, Public Prosecutors, Additional Public Prosecutors and Special Public Prosecutors and staff of such courts for five months is expected to be Rs. 20 lakhs out of which Rs. 10 lakhs would be of a recurring nature and Rs. 10 lakhs of a non-recurring nature. As it is not possible at this stage to visualize the number of such courts that may have to be established, it is, therefore, not possible to give an estimate of actual expenditure that may have to be incurred on this behalf.

3. Sub-clause (1) of clause 59 of the Bill, provides, *inter alia*, for constitution of one or more Review Committees by the Central Government. Some expenditure of a recurring nature will have to be incurred in connection with the Review Committees and it is not possible at this stage to make an accurate estimate of the expenditure which may be involved.

4. The provisions of the Bill do not involve any other expenditure of a recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (*3*) of clause 19 of the Bill empowers the Central Government to make rules to prescribe the procedure for admission and disposal of an application made under sub-clause (*1*) of clause 19.

2. Clause 60 of the Bill empowers the High Courts to make such rules, if any, as they may deem necessary for carrying out the provisions of the Bill relating to Special Courts within their territories.

3. Clause 61 of the Bill empowers the Central Government to make rules for carrying out the provisions of the Bill to provide for all or any of the following matters, namely:—

(*a*) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient and the removal of such persons from such areas;

(*b*) the entry into, and search of any vehicle, vessel, or air craft; or any place, whatsoever;

(*c*) conferring powers upon the Central Government, State Government, Administrator of a Union territory under article 239 of the Constitution, an officer of the Central Government not lower in rank than that of a Joint Secretary, or an officer of a State Government not lower in rank than that of a District Magistrate to make general or special orders to prevent or deal with terrorist acts;

(*d*) the arrest and trial of persons contravening any of the rules or any order made thereunder;

(*e*) punishment of any person who contravenes or attempts to contravene or abets or attempts to abet the contravention of any rule or order made thereunder with imprisonment for a term which may extend to one year or fine or both;

(*f*) providing for the seizure and detention of any property in respect of which such contravention, attempt or abetment as is referred to in clause (e) has been committed and for the adjudication of such seizure and detention, whether by any court or by any other authority;

(*g*) determination of the price of the forfeited property under sub-section (*2*) of section 10;

(*h*) the procedure for admission or disposal of an application under sub-section (*3*) of section 19;

(*i*) the qualifications of the members of the Review Committee under sub-section (*2*) of section 59.

4. The matters in respect of which the rules may be made under the foregoing provisions relate to matters of detail or procedure. The delegation of legislative power is, therefore, of a normal character.

MEMORANDUM EXPLAINING THE MODIFICATIONS CONTAINED IN THE BILL TO REPLACE THE PREVENTION OF TERRORISM ORDINANCE, 2001

The Prevention of Terrorism Bill, 2001, which seeks to repeal the Prevention of Terrorism Ordinance, 2001 proposes to make the following modifications, in addition to modifications of consequential or drafting nature, which are as under:—

(i) It is being provided that the legislation shall remain in force for a period of three years instead of five years from the date of its commencement.

(ii) Sub-clause (8) of clause 3 which makes provision for punishment of person who is in possession of an information which he knows or believes to be of material assistance in preventing the commission of terrorist act and fails to disclose that information to the police, is being omitted.

(iii) Clause 7 is being modified to delete reference to the Special Courts, thus doing away with concurrent jurisdiction of the Designated Authority and the Special Courts and to provide for an appeal against the order made by the Designated Authority to the Special Court.

(iv) Clause 8 is being modified to vest power of forfeiture of the proceeds of terrorism in the Special Court instead of the Designated Authority.

(v) Sub-clause (3) of clause 47 of the Bill makes provision for laying of an anual interception report by the Central Government before each House of Parliament. In clause 62 of the Bill, similar provision has been made for the orders and rules also.

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to make provisions for the prevention of, and for dealing with, terrorist activities and for matters connected therewith.

(Shri L. K. Advani, Minister of Home Affairs)

Appendix II

I. India is a Party to the following international anti-terrorism conventions:

1. The Convention on Offences and Certain Acts Committed on Board Aircraft, signed at Tokyo on 14th September 1963;

(Implemented by the Tokyo Convention Act, 1975).

2. The Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 Decembe 1970;

(Implemented by the Anti Hijacking Act, 1982).

3. The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed a Montreal on 23rd September 1971;

(Implemented by the Suppression of Unlawful Acts Against Safety of Civil Aviation Act, 1982).

4. The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents, adopted by the General Assembly of the UN on 14th December, 1973;

(No implementing legislation is required as the offenses covered are punishable under the Indian Pena Code).

5. The International Convention against the Taking of Hostages, adopted by the General Assembly of the UN on 17th December, 1979;

(Implemented by Section 364 A of Indian Penal Code, 1860, inserted by Criminal Law Amendment Act, 1993, s.2).

6. The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving international Civi Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civ Aviation, signed at Montreal on 24th February 1988;

7. The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done a Rome on 10th March, 1988;

(Implementation by Amending Merchant Shipping Act, 1948).

8. The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on th Continental shelf, done at Rome on 10th March, 1988;

(Implementation by Amending Merchant Shipping Act, 1948).

9. The Convention on the Marking of Plastic Explosives for the purpose of Detection, signed at Montreal on 1 March 1991;

10. The International Convention for the Suppression of Terrorist Bombings adopted by the General Assembl of the UN on 15th December, 1997;

11. In addition, India has signed the International Convention for the Suppression of Financing of Terrorism adopted by the General Assembly of the UN on 9th December 1999.

(Many aspects of financing of Terrorism are addressed in recent legislation, i.e., the Prevention of Terrorist Ordinance.)

Appendix III

रजिस्ट्री सं० डी० एल०-33004/99

REGD. NO. D. L.-33004/99

भारत का राजपत्र
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EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

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गृह मंत्रालय

आदेश

नई दिल्ली, 5 दिसम्बर, 2001

का.आ. 1194(अ).—आतंकवाद निवारण अध्यादेश, 2001 (2001 का 9) की धारा 18 की उपधारा (2) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तथा इस बात से संतुष्ट होने के बाद कि (1) कम्यूनिस्ट पार्टी ऑफ इण्डिया (मार्क्सवादी—लैनिनवादी)—पीपल्स वार, इसके सभी गुट तथा फ्रंट संगठन ; और (2) माओवादी कम्यूनिस्ट सैन्टर (एमसीसी), इसके सभी गुट तथा फ्रंट संगठन आतंकवाद में संलिप्त हैं, केन्द्र सरकार एतद्द्वारा उक्त संगठनों को इस आदेश के प्रकाशन की तारीख से उक्त अध्यादेश की अनुसूची में शामिल करती है तथा उक्त अनुसूची निम्न प्रकार से संशोधित हो जाएगी :

अनुसूची

(धारा 18 देखें)

"24. कम्यूनिस्ट पार्टी ऑफ इण्डिया (मार्क्सवादी—लैनिनवादी)—पीपल्स वार, इसके सभी गुट तथा फ्रंट संगठन।

25. माओवादी कम्यूनिस्ट सैन्टर (एमसीसी), इसके सभी गुट तथा फ्रंट संगठन"।

[फा. सं. II-13014/10/2001-लीगल सैल]

ए. के. जैन, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

ORDER

New Delhi, the 5th December, 2001

S. O. 1194(E).—In exercise of the powers conferred by clause (a) of Sub-section (2) of Section 18 of the Prevention of Terrorism Ordinance, 2001 (9 of 2001), and on being satisfied that (1) the Communist Party of India (Marxist—Leninist)—People's War, all its formations and front organisations; and (2) the Maoist Communist Centre (MCC), all its formations and front organisations are involved in terrorism, the Central Government hereby adds the organisations aforesaid to the Schedule to the said Ordinance with effect from the date of publication of this Order, and the said Schedule shall stand amended as under :

SCHEDULE

(See Section 18)

"24. Communist Party of India (Marxist—Leninist)—People's War, all its formations and front organisations.

25. Maoist Communist Centre (MCC), all its formations and front organisations".

[F. No. II-13014/10/2001-Legal Cell]

A. K. JAIN, Jt. Secy.